Argued 1-38 Justice Davis
Argued.
12. At.

Reversed

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~527.~~ 270

JAY COOKE, WILLIAM G. MOREHEAD, H. D. COOKE, H. C FAHNESTOCK, EDWARD DODGE, AND PITT COOKE, AS JAY COOKE AND COMPANY, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED SEPTEMBER 29, 1874.

Chr Supreme Court
D United

SUPREME COURT OF THE UNITED STATES.

No. 527.

JAY COOKE, WILLIAM G. MOREHEAD, H. D. COOKE, H. C. FAHNESTOCK, EDWARD DODGE, AND PITT COOKE, AS JAY COOKE AND COMPANY, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error to circuit court	1	1
Clerk's certificate	4	1
Writ of error to district court	6	2
Citation	9	3
Declaration	11	4
Pleas	57	27
Judgment	58	28
Testimony of Henry H. Van Dyck	59	28
James F. Russell	62	30
John Irwin	62	30
James F. Russell, (recalled)	66	32
Louis L. Scovill	66	32
John P. Bigelow	68	33
William H. Andrews	69	34
Edwin L. Jones	71	35
Albert W. Steele	72	35
John Irwin, (recalled)	73	36
John P. Bigelow, (recalled)	73	36
Henry H. Van Dyck, (recalled)	74	36
Robert McCartee	75	37
William A. Meloy	76	37
Henry H. Van Dyck, (recalled)	77	38
Thomas G. Jones	78	38
Henry H. Van Dyck, (recalled)	79	39
Harris G. Fahnestock	79	9
George R. Waters	80	39
George W. Casilear	81	40
David M. Cooper	95	47
Charles Burt	100	50

	Original.	Print.
Testimony of Philemon Dickinson	103	51
James P. Major	104	52
James Bannister	105	52
James Gray	107	53
William A. Meloy, (recalled)	110	55
John Irwin, (recalled)	112	56
John P. Bigelow, (recalled)	115	57
DEFENDANTS' TESTIMONY.		
Testimony of Uzal C. Ryerson	117	58
George W. Tichener	126	62
Matthias C. Eaton	130	65
George T. Jones	138	68
Philip W. Holmes	142	70
Edward Dodge	142	70
Deposition of Adam S. Pratt	143	71
Testimony of George W. Casilear	144	71
Defendant's request to charge	148	73
Charge to the jury	150	74
Bond under writ of error	171	85
Assignment of error	175	86
Joinder in error	177	87
Judgment record	179	87
Consent for the return of exhibits	183	88
Exhibit A, No. 1	184	89
D, No. 1	184	89
D, No. 1	185	90
(———)	185	90
(———)	186	90
C 1	187	91
K 1	189	92
E	191	92
F, No. 1	192	93
F, No. 2	193	93
F, No. 3	194	94
L, No. 8	194	95
L, No. 9	195	95
L, No. 10	195	95
M, No. 7	197	96
M, No. 9	197	96
J, 3	198	97
Deposition of Adam S. Pratt	204	99
Report of congressional committee	207	101
Opinion of Judge Woodruff	209	102
Petition of Edwin M. Lewis	237	115
Order authorizing deposit of Government bonds as security on appeal	243	117
Joinder in error	247	118
Citation	249	118

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York in the second circuit, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said circuit court before you, between the United States of America, plaintiffs, and Jay Cooke, William G. Morehead, Henry D. Cooke, Harris C. Fahnestock, Edward Dodge, and Pitt Cooke, comprising the firm of Jay Cooke and Company, defendants, a manifest error hath happened, to the great damage of the said defendants, as is said and as appears by their complaint: we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all

2 things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, before the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 11th day of August, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-eighth.

KENNETH G. WHITE,
Clerk.

The above writ of error is hereby allowed.

WARD HUNT,
Asso. Just. Sup. Ct. U. S.

3 (Indorsed:) U. S. circuit court, S. D. of N. Y. Second circuit. Jay Cooke et al. ads. The United States. Writ of error. C. D. Burrill, atty. for plffs. in error.

E. & A., p. 145.

Service of a copy of the within writ of error admitted, this August 13, 1874.

GEORGE BLISS,
U. S. Att.

Filed Aug. 13, 1874.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

4 I, Kenneth G. White, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from one to 247, contain a true and complete transcript of the record and proceedings had in said court in the case of Jay Cooke et al., plaintiffs in error, agst. The United States, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of

New York, in the second circuit, this 18th day of September, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the said United States the ninety-ninth.

[SEAL.] KENNETH G. WHITE,
Clerk.

5 Pleas before the judges of the circuit court of the United States for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, of April term, in the year one thousand eight hundred and seventy-three.

Witness the honorable Lewis B. Woodruff, one of the judges of said circuit court.

KENNETH G. WHITE, ESQ,
Clerk.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the 4th day of December, 1871, in the term of October, 1871, the President of the United States of America sent to the judge of the district court of the United States for the southern district of New York, in the second circuit, a certain writ of error *close* in the words following, to wit:

6 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judge of the district court of the United States for the southern district of New York, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said district court before you, between the United States of America, plaintiffs, and Jay Cooke, William G. Morehead, Henry D. Cooke, Harris C. Fahnestock, Edward Dodge, and Pitt Cooke, comprising the firm of Jay Cooke & Company, defendants, a manifest error has happened, to the great damage of the said defendants, as is said, and as appears by their said complaint: we being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the circuit court of the United States for the southern district of New York, in
7 the second circuit, at the court-house in the city of New York, together with this writ, so that you have the same at the said place before the justices aforesaid on the first day of January next, that the record and proceedings aforesaid being inspected, the said justices of the circuit court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, this fourth day of December, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-fifth.

[L. S.] KENNETH G. WHITE,
Clerk.

The foregoing writ is allowed.
DECEMBER 4, 1871.
(Signed) SAML. BLATCHFORD,
District Judge.

8 The return to the within writ of error appears in the following (printed and written) papers and proceedings.

Dated New York, January 3, 1872.

[L. S.] GEO. F. BETTS,
Clerk U. S. District Court Southern District of New York.

(Endorsed:) U. S. circuit court, southern district of New York. The United States vs. Jay Cooke et al. (Copy.) Origl. writ of error. Charles D. Burrill, defts'. atty.

Due and timely service of a copy of the within writ of error, this day, is hereby admitted.

Dec. 5, '71.

NOAH DAVIS,
U. S. Atty.

Lodged in office Dec. 5, '71.

9 By the honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To the United States of America and their district attorney for the said district:

Whereas Jay Cooke, William G. Morehead, Henry D. Cooke, Harris C. Fahnestock, Edward Dodge, and Pitt Cooke, comprising the firm of Jay Cooke & Company, lately issued out of the circuit court of the United States for the southern district of New York, in the second circuit, a writ of error, directed to the judge of the district court of the United States for the southern district of New York, stating that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court, before the judge thereof, between the United States of America, plaintiffs, and Jay Cooke, William G. Morehead, Henry D. Cooke, Harris C. Fahnestock, Edward Dodge, and Pitt Cooke, comprising the firm of Jay Cooke & Company, defendants, a manifest error hath happened, to the great damage of the said defendants.

10 And whereas, for the correction of that error in due manner the said writ has been issued, returnable at the next stated term of the circuit court of the United States for the southern district of New York, in the second circuit, to be held at the court-house in the city of New York on the first day of January next; you are therefore hereby cited to appear before the said circuit court at the city of New York, on the first day of January next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 4th day of December, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-fifth.

(Signed) SAM'L BLATCHFORD,
District Judge.

(Endorsed:) U. S. circuit court, southern district of New York. The United States vs. Jay Cooke et al. Original citation. Charles D. Burrill, defts.' atty.

Due and timely service of the within and the receipt of a copy this day is hereby admitted.
Decr. 5, '71.

NOAH DAVIS,
U. S. Atty.

Lodged in office Decr. 5, '71.

11 THE UNITED STATES OF AMERICA, plaintiffs,
against
JAY COOKE, WILLIAM G. MOREHEAD, HENRY D. Cooke, Harris C. Fahnestock, Edward Dodge, and Pitt Cooke, defendants.

Pleas before the judge of the district court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, of the term of May, 1871, to wit, of the day of May, in the year of our Lord one thousand eight hundred and seventy-one.

Witness the honorable Samuel Blatchford, judge of the said court.

GEORGE F. BETTS, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the 4th day of March, 1868, in March term of 1868, before the judge of the district court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, came the United States of America, by their attorney, and brought into the said court, before the aforesaid judge thereof, then there, their certain declaration against Jay Cooke, William G. Morehead, Henry D. Cooke, Harris C. Fahnestock, Edward Dodge,
12 and Pitt Cooke, being in custody, &c., of a plea of debt; which said declaration follows in these words, that is to say:

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The United States of America, plaintiffs in this suit, by Samuel G. Courtney, their district attorney for the said southern district, complain of Jay Cooke, William G. Morehead, Henry D. Cooke, Harris C. Fahnestock, Edward Dodge, and Pitt Cooke, defendants in this suit, being in custody, &c., of a plea that they render unto the said plaintiff the sum of eighteen thousand dollars, which they, the said defendants, owe to and have had and received to and for the use of them, the said plaintiffs.

First. For that, whereas, heretofore, to wit, on or about the twenty-first day of September, A. D. 1867, at the city of New York, in the said southern district, the said defendants then and there doing business as brokers, and copartners, under the firm-name and style of Jay Cooke & Co., were indebted to the United States of America aforesaid, for the sum of one thousand and nineteen and $\frac{60}{100}$ dollars, money had and received at the city aforesaid by them, to and for the use of the United States of America, and of their property, on the said twenty-first day of September, A. D. 1867. Such money was obtained by said defendants at the city aforesaid from the said plaintiffs, upon the occasion of the said firm having delivered to the said plaintiffs therefor, what purported to be a certain obligation of the United States aforesaid, known as a seven-thirty note, and coupon attached, for the principal sum of one thousand and nineteen $\frac{60}{100}$ dollars interest, to wit, a note bearing seven

and $\frac{30}{100}$ per cent. interest per annum, and numbered 68,446 B, of the series of seven-thirty notes, issued June 15th, 1865, by the United
13 States aforesaid, together with an interest-coupon attached as aforesaid to said note, calling for interest from June 15th, 1867; which note, with coupon attached as aforesaid, was by the said defendants composing the firm aforesaid, at the time they delivered it to the officer of the subtreasury of the United States aforesaid, professed to be, and, by the plaintiffs aforesaid and their officer aforesaid, was, when received from them, supposed to be a genuine note, with a genuine coupon attached, of the United States aforesaid; and by the representations and inducement of the said defendants then and there practised, the same was received by the United States and their officer aforesaid as a valid, genuine note, with genuine coupon attached, at the subtreasury of the United States aforesaid at the city of New York, on the twenty-first day of September, A. D. 1867.

The said note and coupon were in fact counterfeit, and neither of them had ever been executed or issued by the United States of America, their officers or agents, but had been forged and falsely made and uttered, and were no obligation whatever of or upon the United States aforesaid; and were by them, to wit, by their officer aforesaid, received as aforesaid under the belief created by the representations and inducement aforesaid, that the said note, with coupon attached, was good, and formed a valuable and adequate consideration for the money received by the defendants as aforesaid, which was retained from plaintiffs after discovery that the said note and coupon were counterfeit, whereof prompt notice was given to said defendants. And being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at said city of New York, undertook and then and there faithfully promised the said United States of America, plaintiffs, to pay to said plaintiffs the said sum of money, to wit, one thousand and nineteen and $\frac{60}{100}$ dollars, when they, the said defend-
14 ants should be thereunto afterwards requested. Yet the said defendants, not regarding their said promise and undertaking, although often requested so to do, have not as yet paid said sum of money or any part thereof; but the said defendants to pay the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs to the amount, to wit, of one thousand and nineteen and $\frac{60}{100}$ dollars, with interest from the date last aforesaid; and therefore they bring this suit, &c.

Second. For that the said defendants, composing the firm aforesaid, were indebted to the plaintiffs aforesaid, at the city of New York aforesaid, on the twenty-first day of September, A. D. 1867 aforesaid, in the further sum of one thousand and nineteen and $\frac{60}{100}$ dollars, for the said sum by said defendants then and there had and received, to and for the use of the said plaintiffs; and being so indebted, and, in consideration thereof, the said defendants afterwards, to wit, on said twenty-first day of September, A. D. 1867, at said city, undertook and faithfully promised the said plaintiffs to pay to said plaintiffs the said sum of money when they, the said defendants, should thereunto afterwards be requested. Nevertheless the said defendants, not regarding their undertaking and promise aforesaid, but contriving to deceive the said plaintiffs in this behalf, have not as yet paid the said sum of money, or any part thereof, to plaintiffs, although often requested so to do; but the said defendants to pay the same to plaintiffs, or to any one for plaintiffs, have hitherto wholly neglected and refused, and still do neglect and refuse, to the

damage of said plaintiffs one thousand and nineteen and $\frac{60}{100}$ dollars, with interest from the date aforesaid; and therefore they bring this suit, &c.

Third. For that, whereas, heretofore, to wit, on or about the twenty-sixth day of September, A. D. 1867, at the city of New York, in
15 the said southern district, the said defendants then and there doing business as brokers, and copartners, under the firm-name and style of Jay Cooke & Co., were indebted to the United States in the sum of one thousand and twenty and $\frac{60}{100}$ dollars, money had and received at the city aforesaid, by them, to and for the use of the United States of America, and of their property, on the said twenty-sixth day of September, A. D. 1867. Such money was obtained by said defendants at the city aforesaid from the said plaintiffs, upon the occasion of the said firm having delivered to the said plaintiffs therefor what purported to be a certain obligation of the United States aforesaid, known as a seven-thirty note, and coupon attached, for the principal sum of one thousand and twenty and $\frac{60}{100}$ dollars interest, to wit, a note bearing seven and $\frac{30}{100}$ per cent. interest per annum, and numbered 68,466 B, of the series of seven-thirty notes issued June 15th, 1865, by the United States aforesaid, together with an interest coupon attached as aforesaid to said note, calling for interest from June 15th, 1867; which note, with coupon attached as aforesaid, was by the said defendants composing the firm aforesaid, at the time they delivered it to the officer of the subtreasury of the United States aforesaid, professed to be, and by the plaintiffs aforesaid and their officer aforesaid was, when received from them, supposed to be a genuine note, with a genuine coupon attached, of the United States aforesaid; and by the representations and inducement of the said defendants then and there practised, the same was received by the United States and their officer aforesaid as a valid, genuine note, with genuine coupon attached, at the subtreasury of the United States aforesaid, at the city of New York, on the twenty-sixth day of September, A. D. 1867.

The said note and coupon were in fact counterfeit, and neither of them had ever been executed or issued by the United States of Ameri-
16 ca, their officers or agents, but had been forged and falsely made and uttered, and were no obligation whatever of or upon the United States aforesaid; and were by them, to wit, by their officer aforesaid, received as aforesaid, under the belief created by the representations and inducement aforesaid, that the said note with coupon attached was good, and formed a valuable and adequate consideration for the money received by the defendants as aforesaid, which was retained from plaintiffs after discovery that the said note and coupon were counterfeit, whereof prompt notice was given to said defendants. And being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at said city of New York, undertook and then and there faithfully promised the said United States of America, plaintiffs, to pay to said plaintiffs the said sum of money, to wit, one thousand and twenty and $\frac{60}{100}$ dollars, when they the said defendants should be thereunto afterwards requested. Yet the said defendants, not regarding their said promise and undertaking, although often requested so to do, have not as yet paid said sum of money or any part thereof; but the said defendants to pay the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs to the amount, to wit, of one thousand and twenty and $\frac{60}{100}$ dollars, with interest from the date last aforesaid; and therefore they bring this suit, &c.

Fourth. For that the said defendants, composing the firm aforesaid,

were indebted to the plaintiffs aforesaid, at the city of New York aforesaid, on the twenty-sixth day of September, A. D. 1867, aforesaid, in the further sum of one thousand and twenty and $\frac{60}{100}$ dollars, for the said sum by said defendants then and there had and received to and for the use of the said plaintiffs; and being so indebted, and in consideration thereof, the said defendants afterward, to wit, on the said twen-
17 ty-sixth day of September, A. D. 1867, at said city, undertook and faithfully promised the said plaintiffs to pay to said plaintiffs the said sum of money when they, the said defendants, should thereunto afterward be requested. Nevertheless the said defendants, not regarding their undertaking and promise aforesaid, but contriving to deceive the said plaintiffs in this behalf, have not as yet paid the said sum of money, or any part thereof, to plaintiffs, although often requested so to do; but the said defendants to pay the same to plaintiffs, or to any one for plaintiffs, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs one thousand and twenty and $\frac{60}{100}$ dollars, with interest from the date aforesaid; and therefore they bring this suit, &c.

Fifth. For that, whereas, heretofore, to wit, on or about the twenty-sixth day of September, A. D. 1867, at the city of New York, in the said southern district, the said defendants then and there doing business as brokers, and copartners under the firm-name and style of Jay Cooke & Co., were indebted to the United States of America, aforesaid, for the sum of one thousand and twenty and $\frac{60}{100}$ dollars, money had and received at the city aforesaid by them, to and for the use of the United States of America, and of their property, on the said twenty-sixth day of September, A. D. 1867. Such money was obtained by said defendants at the city aforesaid from the said plaintiffs, upon the occasion of the said firm having delivered to the said plaintiffs, therefor, what purported to be a certain obligation of the United States aforesaid, known as a seven*ty*-thirty note and coupon attached for the principal sum of one thousand dollars and twenty and $\frac{60}{100}$ dollars interest, to wit, a note bearing seven and $\frac{30}{100}$ per cent. interest per annum, and numbered 68,649 A, of the series of seven-thirty notes, issued June 15th,
18 1865, by the United States aforesaid, together with an interest coupon attached as aforesaid to said note, calling for interest from June 15th, 1867, which note, with coupon attached as aforesaid, was by the said defendants composing the firm aforesaid, at the time they delivered it to the officer of the subtreasury of the United States aforesaid professed to be, and by the plaintiffs aforesaid and their officer aforesaid was, when received from them, supposed to be a genuine note, with a genuine coupon attached of the United States aforesaid; and by the representations and inducement of the said defendants then and there practised, the same was received by the United States and their officer aforesaid as a valid, genuine note, with genuine coupon attached, at the subtreasury of the United States aforesaid at the city of New York, on the twenty-sixth day of September, A. D. 1867.

The said note and coupon were in fact counterfeit, and neither of them had ever been executed or issued by the United States of America, their officers or agents, but had been forged and falsely made and uttered, and were no obligation whatever of or upon the United States aforesaid; and were by them, to wit, by their officer aforesaid, received as aforesaid under the belief created by the representations and inducement aforesaid, that the said note with coupon attached was good, and formed a valuable and adequate consideration for the money received by the defendants as aforesaid, which was retained from plaintiffs after

discovery that the said note and coupon were counterfeit, whereof prompt notice was given to said defendants; and being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at said city of New York, undertook and, then and there faithfully promised the said United States of America plaintiffs, to pay to said plaintiffs the said sum of money, to wit, one thousand and twenty and $\frac{60}{100}$ dollars, when they the said defend-
19 ants should be thereunto afterwards requested. Yet the said defendants, not regarding their said promise and undertaking, although often requested so to do, have not as yet paid said sum of money or any part thereof; but the said defendants to pay the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs to the amount, to wit, of one thousand and twenty and $\frac{60}{100}$ dollars, with interest from the date last aforesaid; and therefore they bring this suit, &c.

Sixth. For that the said defendants composing the firm aforesaid were indebted to the plaintiffs aforesaid, at the city of New York aforesaid, on the twenty-sixth day of September, A. D. 1867, aforesaid, in the further sum of one thousand and twenty and $\frac{60}{100}$ dollars, for the said sum by said defendants then and there had and received to and for the use of the said plaintiffs; and being so indebted, and, in consideration thereof, the said defendants afterwards, to wit, on said twenty-sixth day of September, A. D. 1867, at said city, undertook and faithfully promised the said plaintiffs to pay to said plaintiffs the said sum of money when they, the said defendants, should thereunto afterwards be requested. Nevertheless the said defendants, not regarding their undertaking and promise aforesaid, but contriving to deceive the said plaintiffs in this behalf, have not, as yet, paid the said sum of money, or any part thereof, to plaintiffs, although often requested so to do; but the said defendants to pay the same to plaintiffs, or to any one for plaintiffs, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs one thousand and twenty and $\frac{60}{100}$ dollars, with interest from the date aforesaid; and therefore they bring this suit, &c.

Seventh. For that, whereas, heretofore, to wit, on or about the
20 twenty-sixth day of September, A. D. 1867, at the city of New York, in the said southern district, the said defendants then and there doing business as brokers, and copartners, under the firm name and style of Jay Cooke & Co., were indebted to the United States of America, aforesaid, for the sum of one thousand and twenty and $\frac{60}{100}$ dollars, money had and received at the city aforesaid, by them, to and for the use of the United States of America, and of their property, on the said twenty-sixth day of September, A. D. 1867. Such money was obtained by said defendants at the city aforesaid from the said plaintiffs, upon the occasion of the said firm having delivered to the said plaintiffs therefor, what purported to be a certain obligation of the United States aforesaid, known as a seven-thirty note and coupon attached, for the principal sum of one thousand dollars and twenty and $\frac{60}{100}$ dollar interest, to wit, a note bearing seven and $\frac{30}{100}$ per cent. interest per annum, and numbered 140,121 A of the series of seven-thirty notes issued June 15th, 1865, by the United States aforesaid, together with an interest coupon attached as aforesaid to said note, calling for interest from June 15th, 1867; which note, with coupon attached as aforesaid, was by the said defendants composing the firm aforesaid, at the time they delivered it to the officer of the subtreasury of the United States aforesaid, professed to be, and by the plaintiffs aforesaid and their officer

aforesaid was, when received from them, supposed to be a genuine note, with a genuine coupon attached, of the United States aforesaid; and by the representations and inducement of the said defendants then and there practised, the same was received by the United States and their officer aforesaid as a valid, genuine note, with genuine coupon attached, at the subtreasury of the United States aforesaid, at the city of New York, on the twenty-sixth day of September, A. D. 1867.

The said note and coupon were in fact counterfeit, and neither
21 of them had ever been executed or issued by the United States of America, their officers or agents, but had been forged and falsely made and uttered, and were no obligation whatever of or upon the United States aforesaid; and were by them, to wit, by their officer aforesaid, received as aforesaid under the belief created by the representations and inducements aforesaid, that the said note with coupon attached was good, and formed a valuable and adequate consideration for the money received by the defendants aforesaid, which was retained from plaintiffs after discovery that the said note and coupon were counterfeit, whereof prompt notice was given to said defendants. And being so indebted, the said defendants in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the said city of New York, undertook and then and there faithfully promised the said United States of America, plaintiffs, to pay to said plaintiffs the said sum of money, to wit, one thousand and twenty and $\frac{60}{100}$ dollars, when they the said defendants should be thereunto afterwards requested. Yet the said defendants, not regarding their said promise and undertaking, although often requested so to do, have not as yet paid said sum of money, or any part thereof; but the said defendants to pay the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs to the amount, to wit, of one thousand and twenty and $\frac{60}{100}$ dollars, with interest from the date last aforesaid; and therefore they bring this suit, &c.

Eighth. For that the said defendants composing the firm aforesaid were indebted to plaintiffs aforesaid, at the city of New York aforesaid, on the 26th day of September, A. D. 1867 aforesaid, in the further sum of one thousand and twenty and $\frac{60}{100}$ dollars, for the said sum by said defendants then and there had and received to and for the use of said plaintiffs; and being so indebted, and, in consideration thereof,
22 the said defendants afterwards, to wit, on the said twenty-sixth day of September, A. D. 1867, at said city, undertook and faithfully promised the said plaintiffs to pay to said plaintiffs the said sum of money, when they, the said defendants, should thereunto afterwards be requested. Nevertheless the said defendants, not regarding their undertaking and promise aforesaid, but contriving to deceive the said plaintiffs in this behalf, have not as yet paid the said sum of money, or any part thereof, to plaintiffs, although often requested so to do; but the said defendants to pay the same to plaintiffs, or to any one for plaintiffs, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs, one thousand and twenty and $\frac{60}{100}$ dollars, with interest from the date aforesaid; and therefore they bring this suit, &c.

Ninth. For that, whereas, heretofore, to wit, on or about the twenty-sixth day of September, A. D. 1867, at the city of New York, in the said southern district, the said defendants then and there doing business as brokers, and copartners, under the firm-name and style of Jay Cooke & Co., were indebted to the United States of America, aforesaid, for the sum of one thousand and twenty and $\frac{60}{100}$ dollars, money had

and received at the city aforesaid, by them, to and for the use of the United States of America, and of their property, on the said twenty-sixth day of September, A. D. 1867. Such money was obtained by said defendants at the city aforesaid from the said plaintiffs, upon the occasion of the said firm having delivered to the said plaintiffs therefor what purported to be a certain obligation of the United States aforesaid, known as a seven-thirty note and coupon attached for the principal sum of one thousand and twenty and $\frac{60}{100}$ dollars interest, to wit, a note bearing seven and $\frac{30}{100}$ per cent. interest per annum, and numbered
160,236 B, of the series of seven-thirty notes, issued June 15th,
23 1865, by the United States aforesaid, together with an interest-
coupon attached as aforesaid to said note, calling for interest from June 15th, 1867; which note, with coupon attached as aforesaid, was by the said defendants composing the firm aforesaid, at the time they delivered it to the officer of the subtreasury of the United States aforesaid, professed to be, and by the plaintiffs aforesaid and their officer aforesaid was, when received from them, supposed to be a genuine note, with a genuine coupon attached, of the United States aforesaid; and by the representations and inducement of the said defendants then and there practised, the same was received by the United States and their officer aforesaid as a valid, genuine note, with genuine coupon attached, at the subtreasury of the United States aforesaid at the city of New York, on the twenty-sixth day of September, A. D. 1867.

The said note and coupon were in fact counterfeit, and neither of them had ever been executed or issued by the United States of America, their officers or agents, but had been forged and falsely made and uttered, and were no obligation whatever of or upon the United States aforesaid; and were by them, to wit, by their officer aforesaid, received as aforesaid, under the belief created by the representations and inducement aforesaid, that the said note with coupon attached was good, and formed a valuable and adequate consideration for the money received by the defendants as aforesaid, which was retained from plaintiffs after discovery that the said note and coupon were counterfeit, whereof prompt notice was given to said defendants. And being so indebted, the said defendants in consideration thereof, afterward, to wit, on the day and year last aforesaid, at said city of New York, undertook and then and there faithfully promised the said United States of America, plaintiffs, to pay to said plaintiffs the said sum of money, to
wit, one thousand and twenty and $\frac{60}{100}$ dollars when they the
24 said defendants should be thereunto afterwards requested. Yet
the said defendants, not regarding their said promise and undertaking, although often requested so to do, have not as yet paid said sum of money or any part thereof; but the said defendants to pay the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs to the amount, to wit, of one thousand and twenty and $\frac{60}{100}$ dollars, with interest from the date last aforesaid; and therefore they bring this suit, &c.

Tenth. For that the said defendants composing the firm aforesaid, were indebted to the plaintiffs aforesaid, at the city of New York aforesaid, on the twenty-sixth day of September, A. D. 1867, aforesaid, in the further sum of one thousand and twenty and $\frac{60}{100}$ dollars, for the said sum by said defendants then and there had and received to and for the use of the said plaintiffs; and being so indebted, and in consideration thereof, the said defendants afterwards, to wit, on said twenty-sixth day of September, A. D. 1867, at said city, undertook and faithfully promised the said plaintiffs to pay to said plaintiffs the said sum of money

when they, the said defendants, should thereunto afterwards be requested. Nevertheless the said defendants, not regarding their undertaking and promise aforesaid, but contriving to deceive the said plaintiffs in this behalf, have not as yet paid the said sum of money, or any part thereof, to plaintiffs, although often requested so to do; but the said defendants to pay the same to plaintiffs, or to any one for plaintiffs, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs, one thousand and twenty and $\frac{60}{100}$ dollars, with interest from the date aforesaid; and therefore they bring this suit, &c.

Eleventh. For that, whereas, heretofore, to wit, on or about the
25 26th day of September, A. D. 1867, at the city of New York, in the said southern district, the said defendants then and there doing business as brokers, and copartners, under the firm-name and style of Jay Cooke & Co., were indebted to the United States of America, aforesaid, for the sum of one thousand and twenty and $\frac{60}{100}$ dollars, money had and received at the city aforesaid, by them, to and for the use of the United States of America, and of their property, on the said twenty-sixth day of September, A. D. 1867. Such money was obtained by said defendants at the city aforesaid from the said plaintiffs, upon the occasion of the said firm having delivered to the said plaintiffs therefor, what purported to be a certain obligation of the United States aforesaid, known as a seven-thirty note and coupon attached for the principal sum of one thousand dollars, and twenty and $\frac{60}{100}$ dollars interest; to wit, a note bearing seven and $\frac{30}{100}$ per cent. interest per annum, and numbered 160,452 B, of the series of seven-thirty notes, issued June 15th, 1865, by the United States aforesaid, together with an interest-coupon attached as aforesaid to said note, calling for interest from June 15th, 1867, which note with coupon attached as aforesaid, was by the said defendants composing the firm aforesaid, at the time they delivered it to the officer of the subtreasury of the United States aforesaid, professed to be, and by the plaintiffs aforesaid and their officer aforesaid was, when received from them, supposed to be a genuine note, with a genuine coupon attached, of the United States aforesaid; and by the representations and inducement of the said defendants then and there practised, the same was received by the United States and their officer aforesaid as a valid, genuine note, with genuine coupon attached, at the subtreasury of the United States aforesaid, at the city of New York, on the twenty-sixth day of September, A. D. 1867.

The said note and coupon were in fact counterfeit, and neither
26 of them had ever been executed or issued by the United States of America, their officers or agents, but had been forged and falsely made and uttered, and were no obligation whatever of or upon the United States aforesaid; and were by them, to wit, by their officer aforesaid, received as aforesaid under the belief created by the representations and inducement aforesaid, that the said note with coupon attached was good, and formed a valuable and adequate consideration for the money received by the defendants aforesaid, which was retained from plaintiffs after discovery that the said note and coupon were counterfeit, whereof prompt notice was given to said defendants. And being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at said city of New York, undertook and then and there faithfully promised the said United States of America, plaintiffs, to pay to said plaintiffs the said sum of money, to wit, one thousand and twenty and $\frac{60}{100}$ dollars, when they, the said defendants, should be thereunto afterwards requested. Yet the said defend-

ants, not regarding their said promise and undertaking, although often requested so to do, have not as yet paid said sum of money or any part thereof; but the said defendants, to pay the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs to the amount, to wit, of one thousand and twenty and $\frac{60}{100}$ dollars, with interest from the date last aforesaid; and therefore they bring this suit, &c.

Twelfth. For that the said defendants, composing the firm aforesaid, were indebted to the plaintiffs aforesaid, at the city of New York aforesaid, on the twenty-sixth day of September, A. D. 1867, aforesaid, in the further sum of one thousand and twenty and $\frac{60}{100}$ dollars, for the said sum by said defendants then and there had and received to and for the use of the said plaintiffs; and being so indebted, and, in consid-
27 eration thereof, the said defendants afterwards, to wit, on said twenty-sixth day of September, A. D. 1867, at said city, undertook and faithfully promised the said plaintiffs to pay to said plaintiffs the said sum of money when they, the said defendants, should thereunto afterwards be requested. Nevertheless the said defendants, not regarding their undertaking and promise aforesaid, but contriving to deceive the said plaintiffs in this behalf, have not, as yet, paid the said sum of money, or any part thereof, to plaintiffs, although often requested so to do; but the said defendants, to pay the same to plaintiffs, or to any one for plaintiffs, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs, one thousand and twenty and $\frac{60}{100}$ dollars, with interest from the date aforesaid; and therefore they bring this suit, &c.

Thirteenth. For that whereas, heretofore, to wit, on or about the twenty-sixth day of September, A. D. 1867, at the city of New York, in the said southern district, the said defendants then and there doing business as brokers and copartners, under the firm-name and style of Jay Cooke & Co., were indebted to the United States of America, aforesaid, for the sum of one thousand and twenty and $\frac{60}{100}$ dollars, money had and received at the city aforesaid, by them, to and for the use of the United States of America, and of their property, on the said twenty-sixth day of September, A. D. 1867. Such money was obtained by said defendants at the city aforesaid from the said plaintiffs, upon the occasion of the said firm having delivered to the said plaintiffs therefor, what purported to be a certain obligation of the United States aforesaid, known as a seven-thirty note and coupon attached for the principal sum of one thousand dollars, and twenty and $\frac{60}{100}$ dollars interest, to wit, a note bearing seven and $\frac{30}{100}$ per cent. interest per annum, and numbered 160,484 B, of the series of seven-thirty notes issued
28 June 15th, 1865, by the United States aforesaid, together with an interest-coupon attached as aforesaid to said note, calling for interest from June 15th, 1867; which note, with coupon attached as aforesaid, was, by the said defendants composing the firm aforesaid, at the time they delivered it to the officer of the subtreasury of the United States aforesaid, professed to be, and by the plaintiffs aforesaid and their officer aforesaid was, when received from them, supposed to be, a genuine note, with a genuine coupon attached, of the United States aforesaid; and by the representations and inducement of the said defendants then and there practised, the same was received by the United States and their officer aforesaid as a valid, genuine note, with genuine coupon attached, at the subtreasury of the United States aforesaid, at the city of New York, on the twenty-sixth day of September, A. D. 1867.

The said note and coupon were in fact counterfeit, and neither of

them had ever been executed or issued by the United States of America, their officers or agents, but had been forged and falsely made and uttered, and were no obligation whatever of or upon the United States aforesaid; and were by them, to wit, by their officer aforesaid, received as aforesaid under the belief created by the representations and inducement aforesaid, that the said note with coupon attached was good, and formed a valuable and adequate consideration for the money received by the defendants aforesaid, which was retained from plaintiffs after discovery that the said note and coupon were counterfeit, whereof prompt notice was given to said defendants. And being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the said city of New York, undertook and then and there faithfully promised the said United States of America, plaintiffs, to pay to said plaintiffs the said sum of money, to wit, one
29 thousand and twenty and $\frac{60}{100}$ dollars, when they, the said defendants, should be thereunto afterwards requested. Yet the said defendants, not regarding their said promise and undertaking, although often requested so to do, have not as yet paid said sum of money, or any part thereof; but the said defendants to pay the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs to the amount, to wit, of one thousand and twenty and $\frac{60}{100}$ dollars, with interest from the date last aforesaid; and therefore they bring this suit, &c.

Fourteenth. For that the said defendants, composing the firm aforesaid, were indebted to plaintiffs aforesaid, at the city of New York aforesaid, on the 26th day of September, A. D. 1867 aforesaid, in the further sum of one thousand and twenty and $\frac{60}{100}$ dollars, for the said sum by said defendants then and there had and received to and for the use of said plaintiffs; and being so indebted, and, in consideration thereof, the said defendants afterwards, to wit, on said 26th day of September, A. D. 1867, at said city, undertook and faithfully promised the said plaintiffs to pay to said plaintiffs the said sum of money when they, the said defendants, should thereunto afterwards be requested. Nevertheless the said defendants, not regarding their undertaking and promise aforesaid, but contriving to deceive the said plaintiffs in this behalf, have not as yet paid the said sum of money, or any part thereof, to plaintiffs, although often requested so to do; but the said defendants, to pay the same to plaintiffs, or to any one for plaintiffs, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs one thousand and twenty and $\frac{60}{100}$ dollars, with interest from the date aforesaid; and therefore they bring this suit, &c.

Fifteenth. For that whereas heretofore, to wit, on or about the
30 twenty-sixth day of September, A. D. 1867, at the city of New York, in the said southern district, the said defendants then and there doing business as brokers, and copartners, under the firm-name and style of Jay Cooke & Co., were indebted to the United States of America, aforesaid, for the sum of one thousand and twenty and $\frac{60}{100}$ dollars, money had and received at the city aforesaid, by them to and for the use of the United States of America, and of their property, on the said twenty-sixth day of September, A. D. 1867. Such money was obtained by said defendants at the city aforesaid from the said plaintiffs, upon the occasion of the said firm having delivered to the said plaintiffs therefor what purported to be a certain obligation of the United States aforesaid, known as a seven-thirty note and coupon attached, for the principal sum of one thousand, and twenty and $\frac{60}{100}$ dollars interest, to wit, a note bear-

ing seven and $\frac{30}{100}$ per cent. interest per annum, and numbered 180,165 A, of the series of seven-thirty notes, issued June 15th, 1865, by the United States aforesaid, together with an interest-coupon attached as aforesaid to said note, calling for interest from June 15th, 1867; which note, with coupon attached as aforesaid, was by the said defendants composing the firm aforesaid, at the time they delivered it to the officer of the subtreasury of the United States aforesaid, professed to be, and by the plaintiffs aforesaid and their officer aforesaid was, when received from them, supposed to be, a genuine note, with a genuine coupon attached, of the United States aforesaid; and by the representations and inducement of the said defendants then and there practised, the same was received by the United States and their officer aforesaid as a valid, genuine note, with genuine coupon attached, at the subtreasury of the United States aforesaid, at the city of New York, on the twenty-sixth day of September, A. D. 1867.

The said note and coupon were in fact counterfeit, and neither
31 of them had ever been executed or issued by the United States of America, their officers or agents, but had been forged and falsely made and uttered, and were no obligation whatever of or upon the United States aforesaid; and were by them, to wit, by their officer aforesaid, received as aforesaid, under the belief created by the representations and inducement aforesaid, that the said note with coupon attached was good, and formed a valuable and adequate consideration for the money received by the defendants as aforesaid, which was retained from plaintiffs after discovery that the said note and coupon were counterfeit, whereof prompt notice was given to said defendants. And being so indebted, the said defendants in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at said city of New York, undertook and then and there faithfully promised the said United States of America, plaintiffs, to pay to said plaintiffs the said sum of money, to wit, one thousand and twenty and $\frac{60}{100}$ dollars when they, the said defendants, shoud be thereunto afterwards requested. Yet the said defendants, not regarding their said promise and undertaking, although often requested so to do, have not as yet paid said sum of money or any part thereof; but the said defendants to pay the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs to the amount, to wit, of one thousand and twenty and $\frac{60}{100}$ dollars, with interest from the date last aforesaid; and therefore they bring this suit, &c.

Sixteenth. For that the said defendants, composing the firm aforesaid, were indebted to the plaintiffs aforesaid, at the city of New York aforesaid, on the twenty-sixth day of September, A. D. 1867, aforesaid, in the further sum of one thousand and twenty and $\frac{60}{100}$ dollars, for the said sum by said defendants then and there had and received to and for the use of the said plaintiffs; and being so indebted, and
32 in consideration thereof, the said defendants afterwards, to wit, on said twenty-sixth day of September, A. D. 1867, at said city, undertook and faithfully promised the said plaintiffs to pay to said plaintiffs the said sum of money when they, the said defendants, should thereunto afterwards be requested. Nevertheless the said defendants, not regarding their undertaking and promise aforesaid, but contriving to deceive the said plaintiffs in this behalf, have not as yet paid the said sum of money, or any part thereof, to plaintiffs, although often requested so to do; but the said defendants to pay the same to plaintiffs, or to any one for plaintiffs, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said

plaintiffs one thousand and twenty and $\frac{60}{100}$ dollars, with interest from the date aforesaid; and therefore they bring this suit, &c.

Seventeenth. For that whereas heretofore, to wit, on or about the 26th day of September, A. D. 1867, at the city of New York, in the said southern district, the said defendants, then and there doing business as brokers, and copartners, under the firm-name and style of Jay Cooke & Co., were indebted to the United States of America, aforesaid, for the sum of one thousand and twenty and $\frac{60}{100}$ dollars, money had and received at the city aforesaid, by them, to and for the use of the United States of America, and of their property, on the said twenty sixth day of September, A. D. 1867. Such money was obtained by said defendants at the city aforesaid from the said plaintiffs, upon the occasion of the said firm having delivered to the said plaintiffs therefor what purported to be a certain obligation of the United States aforesaid, known as a seven-thirty note and coupon attached for the principal sum of one thousand dollars, and twenty and $\frac{60}{100}$ dol'ars interest, to wit, a note bearing seven and $\frac{30}{100}$ per cent. interest per annum, and numbered 180,105 A, of the series of seven-thirty notes, issued
33 June 15th, 1865, by the United States aforesaid; together with an interest-coupon attached as aforesaid to said note, calling for interest from June 15th, 1867, which note, with coupon attached as aforesaid, was, by the said defendants composing the firm aforesaid, at the time they delivered it to the officer of the subtreasury of the United States aforesaid, professed to be, and by the plaintiffs aforesaid and their officer aforesaid was, when received from them, supposed to be, a genuine note, with a genuine coupon attached, of the United States aforesaid; and by the representations and inducement of the said defend ants then and there practiced, the same was received by the United States and their officer aforesaid as a valid, genuine note, with genuine coupon attached, at the subtreasury of the United States aforesaid, at the city of New York, on the twenty-sixth day of September, A. D. 1867.

The said note and coupon were in fact counterfeit, and neither of them had ever been executed or issued by the United States of America, their officers or agents, but had been forged and falsely made and uttered, and were no obligation whatever of or upon the United States aforesaid, and were by them, to wit, by their officer aforesaid, received as aforesaid under the belief created by the representations and inducement aforesaid that the said note with coupon attached was good and formed a valuable and adequate consideration for the money received by the defendants as aforesaid, which was retained from plaintiffs after discovery that the said note and coupon were counterfeit, whereof prompt notice was given to said defendants. And being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at said city of New York, undertook and then and there faithfully promised the said United States of America,
plaintiffs, to pay to said plaintiffs the said sum of money, to wit,
34 one thousand and twenty and $\frac{60}{100}$ dollars, when they, the said defendants, should be thereunto afterwards requested. Yet the said defendants, not regarding their said promise and undertaking, although often requested so to do, have not as yet paid said sum of money or any part thereof; but the said defendants to pay the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs to the amount, to wit, of one thousand and twenty and $\frac{60}{100}$ dollars, with interest from the date last aforesaid; and therefore they bring this suit, &c.

Eighteenth. For that the said defendants, composing the firm aforesaid, were indebted to the plaintiffs aforesaid, at the city of New York aforesaid, on the 26th day of September, A. D. 1867, aforesaid, in the further sum of one thousand and twenty and $\frac{60}{100}$ dollars, for the said sum by said defendants then and there had and received to and for the use of the said plaintiffs; and being so indebted, and in consideration thereof, the said defendants afterwards, to wit, on said twenty-sixth day of September, A. D. 1867, at said city, undertook and faithfully promised the said plaintiffs to pay to said plaintiffs the said sum of money when they, the said defendants, should thereunto afterwards be requested. Nevertheless the said defendants, not regarding their undertaking and promise aforesaid, but contriving to deceive the said plaintiffs in this behalf, have not as yet paid the said sum of money, or any part thereof, to plaintiffs, although often requested so to do; but the said defendants to pay the same to plaintiffs, or to any one for plaintiffs, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs one thousand and twenty and $\frac{60}{100}$ dollars, with interest from the date aforesaid; and therefore they bring this suit, &c.

35 Nineteenth. For that, whereas, heretofore, to wit, on or about the thirtieth day of September, A. D. 1867, at the city of New York, in the said southern district, the said defendants then and there doing business as brokers, and copartners, under the firm-name and style of Jay Cooke and Co., were indebted to the United States of America aforesaid, for the sum of one thousand and twenty-one and $\frac{40}{100}$ dollars, money had and received at the city aforesaid, by them, to and for the use of the United States of America, and of their property, on the said thirtieth day of September, A. D. 1867. Such money was obtained by said defendants at the city aforesaid from the said plaintiffs, upon the occasion of the said firm having delivered to the said plaintiffs therefor what purported to be a certain obligation of the United States aforesaid, known as a seven-thirty note and coupon attached for the principal sum of one thousand dollars, and twenty-one and $\frac{40}{100}$ dollars interest, to wit, a note bearing seven and $\frac{30}{100}$ per cent. interest per annum, and numbered 68,537 A, of the series of seven-thirty notes, issued June 15th, 1865, by the United States aforesaid, together with an interest-coupon attached as aforesaid to said note, calling for interest from June 15th, 1867; which note, with coupon attached as aforesaid, was by the said defendants composing the firm aforesaid, at the time they delivered it to the officer of the subtreasury of the United States aforesaid, professed to be, and by the plaintiffs aforesaid and their officer aforesaid was, when received from them, supposed to be, a genuine note, with a genuine coupon attached, of the United States aforesaid; and by the representations and inducement of the said defendants, then and there practised, the same was received by the United States and their officer aforesaid as a valid, genuine note, with genuine coupon attached, at the subtreasury of the United States aforesaid, at the city of New York, on the thirtieth day of September, A. D. 1867.

36 The said note and coupon were in fact counterfeit, and neither of them had ever been executed or issued by the United States of America, their officers or agents, but had been forged and falsely made and uttered, and were no obligation whatever of or upon the United States aforesaid; and were by them, to wit, by their officer aforesaid, received as aforesaid, under the belief created by the representations and inducement aforesaid that the said note with coupon attached was good, and formed a valuable and adequate consideration for the money

received by the defendants aforesaid, which was retained from plaintiffs after discovery that the said note and coupon were counterfeit, whereof prompt notice was given to said defendants. And being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the said city of New York, undertook and then and there faithfully promised the said United States of America, plaintiffs, to pay to said plaintiffs the said sum of money, to wit, one thousand and twenty-one and $\frac{40}{100}$ dollars, when they, the said defendants, should be thereunto afterwards requested. Yet the said defendants, not regarding their said promise and undertaking, although often requested so to do, have not as yet paid said sum of money, or any part thereof; but the said defendants to pay the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs to the amount, to wit, of one thousand and twenty-one and $\frac{40}{100}$ dollars, with interest from the date last aforesaid; and therefore they bring this suit, &c.

Twentieth. For that the said defendants composing the firm aforesaid were indebted to plaintiffs aforesaid, at the city of New York aforesaid, on the 30th day of September, A. D. 1867, aforesaid, in the further sum of one thousand and twenty-one and $\frac{40}{100}$ dollars, for the said sum
37 by said defendants then and there had and received to and for the use of said plaintiffs; and being so indebted, and, in consideration thereof, the said defendants afterwards, to wit, on said 30th day of September, A. D. 1867, at said city, undertook and faithfully promised the said plaintiffs to pay to said plaintiffs the said sum of money when they, the said defendants, should thereunto afterwards be requested. Nevertheless the said defendants, not regarding their undertaking and promise aforesaid, but contriving to deceive the said plaintiffs in this behalf, have not as yet paid the said sum of money, or any part thereof, to plaintiffs, although often requested so to do; but the said defendants, to pay the same to plaintiffs, or to any one for plaintiffs, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs, one thousand and twenty-one and $\frac{40}{100}$ dollars, with interest from the date aforesaid; and therefore they bring this suit, &c.

Twenty-first. For that, whereas, heretofore, to wit, on or about the thirtieth day of September, A. D. 1867, at the city of New York, in the said southern district, the said defendants then and there doing business as brokers and copartners, under the firm-name and style of Jay Cooke & Co., were indebted to the United States of America aforesaid, for the sum of one thousand and twenty-one and $\frac{40}{100}$ dollars, money had and received at the city aforesaid, by them, to and for the use of the United States of America, and of their property, on the said thirtieth day of September, A. D. 1867. Such money was obtained by said defendants at the city aforesaid from the said plaintiffs, upon the occasion of the said firm having delivered to the said plaintiffs, therefor, what purported to be a certain obligation of the United States aforesaid, known as a seven-thirty note and coupon attached for the principal sum of one thousand dollars, and twenty-one and $\frac{40}{100}$ dollars interest, to wit, a note bearing seven and $\frac{30}{100}$ per cent. interest per
38 annum, and numbered 160,130 B, of the series of seven-thirty notes, issued June 15th, 1865, by the United States aforesaid, together with an interest-coupon attached as aforesaid to said note, calling for interest from June 15th, 1867; which note, with coupon attached as aforesaid, was by the said defendants composing the firm aforesaid, at the time they delivered it to the officer of the subtreasury

of the United States aforesaid, professed to be, and by the plaintiffs aforesaid and their officer aforesaid was, when received from them, supposed to be a genuine note, with a genuine coupon attached, of the United States aforesaid; and by the representations and inducement of the said defendants then and there practised, the same was received by the United States and their officer aforesaid, as a valid, genuine note, with genuine coupon attached, at the subtreasury of the United States aforesaid, at the city of New York, on the thirtieth day of September, A. D. 1867.

The said note and coupon were, in fact, counterfeit, and neither of them had ever been executed or issued by the United States of America, their officers or agents, but had been forged and falsely made and uttered, and were no obligation whatever, of or upon the United States aforesaid; and were by them, to wit, by their officer aforesaid, received as aforesaid, under the belief created by the representations and inducement aforesaid, that the said note with coupon attached was good, and formed a valuable and adequate consideration for the money received by the defendants as aforesaid, which was retained from plaintiffs after discovery that the said note and coupon were counterfeit, whereof prompt notice was given to said defendants. And being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at said city of New York, undertook, and then and there faithfully promised the said United States of America, plaintiffs, to pay to said plaintiffs the said sum of money, to wit,
39 one thousand and twenty-one and $\frac{40}{100}$ dollars, when they, the said defendants, should be thereunto afterwards requested. Yet the said defendants, not regarding their said promise and undertaking, although often requested so to do, have not as yet paid said sum of money or any part thereof; but the said defendants, to pay the same, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs to the amount, to wit, of one thousand and twenty-one and $\frac{40}{100}$ dollars, with interest from the date last aforesaid; and therefore they bring this suit, &c.

Twenty-second. For that the said defendants composing the firm aforesaid, were indebted to the plaintiffs aforesaid, at the city of New York aforesaid, on the thirtieth day of September, A. D. 1867, aforesaid, in the further sum of one thousand and twenty-one and $\frac{40}{100}$ dollars, for the said sum by said defendants then and there had and received to and for the use of the said plaintiffs; and being so indebted, and, in consideration thereof, the said defendants afterwards, to wit, on said thirtieth day of September, A. D. 1867, at said city, undertook, and faithfully promised the said plaintiffs, to pay to said plaintiffs the said sum of money, when they, the said defendants, should thereunto afterwards be requested. Nevertheless, the said defendants, not regarding their undertaking and promise aforesaid, but contriving to deceive the said plaintiffs in this behalf, have not as yet paid the said sum of money, or any part thereof, to plaintiffs, although often requested so to do; but the said defendants, to pay the same to plaintiffs, or to any one for plaintiffs, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs, one thousand and twenty-one and $\frac{40}{100}$ dollars, with interest from the date aforesaid; and therefore they bring this suit, &c.

40 Twenty-third. For that, whereas, heretofore, to wit, on or about the 30th day of September, A. D. 1867, at the city of New York, in the said southern district, the said defendants then and there doing business as brokers and copartners, under the firm-name and style of

Jay Cooke & Co., were indebted to the United States of America, aforesaid, for the sum of one thousand and twenty-one and $\frac{40}{100}$ dollars, money had and received at the city aforesaid, by them, to and for the use of the United States of America, and of their property, on the said thirtieth day of September, A. D. 1867. Such money was obtained by said defendants at the city aforesaid from the said plaintiffs, upon the occasion of the said firm having delivered to the said plaintiffs therefor, what purported to be a certain obligation of the United States aforesaid, known as a seven*ty*-thirty note and coupon attached for the principal sum of one thousand dollars, and twenty-one and $\frac{40}{100}$ dollars interest; to wit, a note bearing seven and $\frac{30}{100}$ per cent. interest per annum, and numbered 68,761 A, of the series of seven-thirty notes, issued June 15th, 1865, by the United States aforesaid, together with an interest-coupon attached as aforesaid to said note, calling for interest from June 15th, 1867, which note, with coupon attached as aforesaid, was by the said defendants composing the firm aforesaid, at the time they delivered it to the officer of the subtreasury of the United States aforesaid, professed to be, and by the plaintiffs aforesaid and their officer aforesaid was, when received from them, supposed to be a genuine note, with a genuine coupon attached, of the United States aforesaid; and by the representations and inducement of the said defendants then and there practised, the same was received by the United States and their officer aforesaid as a valid, genuine note, with genuine coupon attached, at the subtreasury of the United States aforesaid at the city of New York, on the thirtieth day of September, A. D. 1867.

41 The said note and coupon were in fact counterfeit, and neither of them had ever been executed or issued by the United States of America, their officers or agents, but had been forged and falsely made and uttered, and were no obligation whatever of or upon the United States aforesaid; and were by them, to wit, by their officer aforesaid, received as aforesaid under the belief created by the representations and inducement aforesaid, that the said note with coupon attached was good, and formed a valuable and adequate consideration for the money received by the defendants as aforesaid, which was retained from plaintiffs after discovery that the said note and coupon were counterfeit, whereof prompt notice was given to said defendants. And being so indebted, the said defendants in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at said city of New York, undertook, and then and there faithfully promised the said United States of America, plaintiffs, to pay to said plaintiffs the said sum of money, to wit, one thousand and twenty-one and $\frac{40}{100}$ dollars, when they, the said defendants, should be thereunto afterwards requested. Yet the said defendants, not regarding their said promise and undertaking, although often requested so to do, have not as yet paid said sum of money, or any part thereof; but the said defendants, to pay the same, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs to the amount, to wit, of one thousand and twenty-one and $\frac{40}{100}$ dollars, with interest from the date last aforesaid; and therefore they bring this suit, &c.

Twenty-fourth. For that the said defendants, composing the firm aforesaid, were indebted to the plaintiffs aforesaid, at the city of New York aforesaid, on the 30th day of September, A. D. 1867, aforesaid, in the further sum of one thousand and twenty-one and $\frac{40}{100}$ dollars, for the

42 said sum by said defendants then and there had and received to and for the use of the said plaintiffs; and being so indebted, and in consideration thereof, the said defendants afterwards, to wit, on said

thirtieth day of September, A. D. 1867, at said city, undertook and faithfully promised the said plaintiffs to pay to said plaintiffs the said sum of money when they, the said defendants, should thereunto afterwards be requested. Nevertheless the said defendants, not regarding their undertaking and promise aforesaid, but contriving to deceive the said plaintiffs in this behalf, have not, as yet, paid the said sum of money, or any part thereof, to plaintiffs, although often requested so to do; but the said defendants to pay the same to plaintiffs, or to any one for plaintiffs, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs one thousand and twenty-one and $\frac{40}{100}$ dollars, with interest from the date aforesaid; and therefore they bring this suit, &c.

Twenty-fifth. For that, whereas, heretofore, to wit, on or about the thirtieth day of September, A. D. 1867, at the city of New York, in the said southern district, the said defendants then and there doing business as brokers and copartners, under the firm-name and style of Jay Cooke & Co., were indebted to the United States of America, aforesaid, for the sum of one thousand and twenty-one and $\frac{40}{100}$ dollars, money had and received at the city aforesaid, by them, to and for the use of the United States of America, and of their property, on the said thirtieth day of September, A. D. 1867. Such money was obtained by said defendants at the city aforesaid from the said plaintiffs, upon the occasion of the said firm having delivered to the said plaintiffs, therefor, what purported to be a certain obligation of the United States aforesaid, known as a seven-thirty note, and coupon attached, for the principal sum of one thousand dollars, and twenty-one and $\frac{40}{100}$ dollars interest, to wit, a note
43 bearing seven and $\frac{30}{100}$ per cent. interest per annum, and numbered 160,182 B, of the series of seven-thirty notes issued June 15th, 1865, by the United States aforesaid, together with an interest coupon attached as aforesaid to said note, calling for interest from June 15th, 1867; which note, with coupon attached as aforesaid, was by the said defendants, composing the firm aforesaid, at the time they delivered it to the officer of the subtreasury of the United States aforesaid, professed to be, and by the plaintiffs aforesaid and their officer aforesaid was, when received from them, supposed to be, a genuine note, with a genuine coupon attached, of the United States aforesaid; and by the representations and inducement of the said defendants, then and there practised, the same was received by the United States and their officer aforesaid as a valid, genuine note, with genuine coupon attached, at the subtreasury of the United States aforesaid, at the city of New York, on the thirtieth day of September, A. D. 1867.

The said note and coupon were in fact counterfeit, and neither of them had ever been executed or issued by the United States of America, their officers or agents, but had been forged and falsely made and uttered, and were no obligation whatever of or upon the United States aforesaid; and were by them, to wit, by their officer aforesaid, received as aforesaid, under the belief created by the representations and inducement aforesaid that the said note with coupon attached was good, and formed a valuable and adequate consideration for the money received by the defendants aforesaid, which was retained from plaintiffs after discovery that the said note and coupon were counterfeit, whereof prompt notice was given to said defendants. And, being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the said city of New York, undertook, and then and there faithfully promised the said United States of
44 America, plaintiffs, to pay to said plaintiffs the said sum of

money, to wit, one thousand and twenty-one and $\frac{40}{100}$ dollars, when they, the said defendants, should be thereunto afterwards requested. Yet the said defendants, not regarding their said promise and undertaking, although often requested so to do, have not as yet paid said sum of money, or any part thereof; but the said defendants to pay the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs to the amount, to wit, of one thousand and twenty-one and $\frac{40}{100}$ dollars, with interest from the date last aforesaid; and therefore they bring this suit, &c.

Twenty-sixth. For that the said defendants composing the firm aforesaid were indebted to plaintiffs aforesaid, at the city of New York aforesaid, on the 30th day of September, A. D. 1867 aforesaid, in the further sum of one thousand and twenty-one and $\frac{40}{100}$ dollars, for the said sum by said defendants then and there had and received to and for the use of said plaintiffs; and being so indebted, and in consideration thereof, the said defendants afterwards, to wit, on said 30th day of September, A. D. 1867, at said city, undertook and faithfully promised the said plaintiffs to pay to said plaintiffs the said sum of money when they, the said defendants, should thereunto afterwards be requested. Nevertheless, the said defendants, not regarding their undertaking and promise aforesaid, but contriving to deceive the said plaintiffs in this behalf, have not as yet paid the said sum of money, or any part thereof, to plaintiffs, although often requested to do so; but the said defendants to pay the same to plaintiffs, or to any one for plaintiffs, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs one thousand and twenty-one and $\frac{40}{100}$ dollars, with interest from the date aforesaid; and therefore they bring this suit, &c.

45 Twenty-seventh. For that, whereas, heretofore, to wit, on or about the first day of October, A. D. 1867, at the city of New York, in the said southern district, the said defendants then and there doing business as brokers, and copartners under the firm-name and style of Jay Cooke & Co., were indebted to the United States of America aforesaid for the sum of one thousand and twenty-one and $\frac{60}{100}$ dollars, money had and received at the city aforesaid, by them, to and for the use of the United States of America, and of their property, on the said first day of October, A. D. 1867. Such money was obtained by said defendants at the city aforesaid from the said plaintiffs, upon the occasion of the said firm having delivered to the said plaintiffs, therefor, what purported to be a certain obligation of the United States aforesaid, known as a seven-thirty note and coupon attached, for the principal sum of one thousand dollars, and twenty-one and $\frac{60}{100}$ dollars interest, to wit, a note bearing seven and $\frac{30}{100}$ per cent. interest per annum, and numbered 68,715 A, of the series of seven-thirty notes, issued June 15th, 1865, by the United States aforesaid, together with an interest coupon attached, as aforesaid, to said note, calling for interest from June 15th, 1867, which note, with coupon attached as aforesaid, was by the said defendants, composing the firm aforesaid, at the time they delivered it to the officer of the subtreasury of the United States aforesaid, professed to be, and by the plaintiffs aforesaid and their officer aforesaid was, when received from them, supposed to be, a genuine note, with a genuine coupon attached, of the United States aforesaid; and by the representations and inducement of the said defendants, then and there practised, the same was received by the United States and their officer aforesaid as a valid, genuine note, with genuine coupon attached, at the subtreasury of the United States aforesaid, at the city of New York, on the first day of October, A. D. 1867.

46 The said note and coupon were in fact counterfeit, and neither of them had ever been executed or issued by the United States of America, their officers or agents, but had been forged and falsely made and uttered, and were no obligation whatever of or upon the United States aforesaid; and were by them, to wit, by their officer aforesaid, received as aforesaid, under the belief created by the representations and inducement aforesaid, that the said note with coupon attached was good, and formed a valuable and adequate consideration for the money received by the defendants as aforesaid, which was retained from plaintiffs after discovery that the said note and coupon were counterfeit, whereof prompt notice was given to said defendants. And being so indebted, the said defendants in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at said city of New York, undertook and then and there faithfully promised the said United States of America, plaintiffs, to pay to said plaintiffs the said sum of money, to wit, one thousand and twenty-one and $\frac{60}{100}$ dollars, when they, the said defendants, should be thereunto afterwards requested. Yet the said defendants, not regarding their said promise and undertaking, although often requested so to do, have not as yet paid said sum of money or any part thereof; but the said defendants to pay the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs to the amount, to wit, of one thousand and twenty-one and $\frac{60}{100}$ dollars, with interest from the date last aforesaid; and therefore they bring this suit, &c.

Twenty-eighth. For that the said defendants composing the firm aforesaid were indebted to the plaintiffs aforesaid, at the city of New York aforesaid, on the first day of October, A. D. 1867, aforesaid, in the further sum of one thousand and twenty-one and $\frac{60}{100}$ dollars,

47 for the said sum by said defendants then and there had and received to and for the use of the said plaintiffs; and being so indebted, and in consideration thereof, the said defendants afterwards, to wit, on said first day of October, A. D. 1867, at said city, undertook and faithfully promised the said plaintiffs to pay to said plaintiffs the said sum of money when they, the said defendants, should thereunto afterwards be requested. Nevertheless the said defendants, not regarding their undertaking and promise aforesaid, but contriving to deceive the said plaintiffs in this behalf, have not as yet paid the said sum of money, or any part thereof, to plaintiffs, although often requested so to do; but the said defendants to pay the same to plaintiffs, or to any one for plaintiffs, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs one thousand and twenty-one and $\frac{60}{100}$ dollars, with interest from the date aforesaid; and therefore they bring this suit, &c.

Twenty-ninth. For that, whereas, heretofore, to wit, on or about the 3d day of October, A. D. 1867, at the city of New York, in the said southern district, the said defendants then and there doing business as brokers, and copartners, under the firm-name and style of Jay Cooke & Co., were indebted to the United States of America, aforesaid, for the sum of one thousand and twenty-two dollars, money had and received at the city aforesaid, by them, to and for the use of the United States of America, and of their property, on the said third day of October, A. D. 1867. Such money was obtained by said defendants at the city aforesaid from the said plaintiffs, upon the occasion of the said firm having delivered to the said plaintiffs therefor, what purported to be a certain obligation of the United States aforesaid, known as a seven-thirty note and coupon attached for the principal sum of one thousand dol-

48 lars and twenty-two dollars interest, to wit, a note bearing seven and $\frac{30}{100}$ per cent. interest per annum, and numbered 180,107 A, of the series of seven-thirty notes, issued June 15th, 1865, by the United States aforesaid, together with an interest coupon attached as aforesaid to said note, calling for interest from June 15th, 1867, which note, with coupon attached as aforesaid, was by the said defendants composing the firm aforesaid, at the time they delivered it to the officer of the subtreasury of the United States aforesaid, professed to be, and by the plaintiffs aforesaid and their officer aforesaid was, when received from them, supposed to be a genuine note, with a genuine coupon attached, of the United States aforesaid; and by the representations and inducement of the said defendants then and there practised, the same was received by the United States and their officer aforesaid as a valid, genuine note, with genuine coupon attached, at the subtreasury of the United States aforesaid at the city of New York, on the third day of October, A. D. 1867.

The said note and coupon were in fact counterfeit, and neither of them had ever been executed or issued by the United States of America, their officers or agents, but had been forged and falsely made and uttered, and were no obligation whatever of or upon the United States aforesaid; and were by them, to wit, by their officer aforesaid, received as aforesaid under the belief created by the representations and inducement aforesaid, that the said note with coupon attached was good, and formed a valuable and adequate consideration for the money received by the defendants as aforesaid, which was retained from plaintiffs after discovery that the said note and coupon were counterfeit, whereof prompt notice was given to said defendants. And, being so indebted, the said defendants in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at said city of New York, undertook and
49 then and there faithfully promised the said United States of America, plaintiffs, to pay to said plaintiffs the said sum of money, to wit, one thousand and twenty-two dollars, when they the said defendants should be thereunto afterwards requested. Yet the said defendants, not regarding their said promise and undertaking, although often requested to do so, have not as yet paid said sum of money or any part thereof; but the said defendants to pay the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs to the amount, to wit, of one thousand and twenty-two dollars, with interest from the date last aforesaid; and therefore they bring this suit, &c.

Thirtieth. For that the said defendants composing the firm aforesaid were indebted to the plaintiffs aforesaid, at the city of New York aforesaid, on the 3d day of October, A. D. 1867, aforesaid, in the further sum of one thousand and twenty-two dollars for the said sum by said defendants then and there had and received to and for the use of the said plaintiffs; and, being so indebted, and in consideration thereof, the said defendants afterwards, to wit, on the said third day of October, A. D. 1867, at said city, undertook and faithfully promised the said plaintiffs to pay to said plaintiffs the said sum of money when they, the said defendants, should thereunto afterwards be requested. Nevertheless, the said defendants, not regarding their undertaking and promise aforesaid, but contriving to deceive the said plaintiffs in this behalf, have not, as yet, paid the said sum of money, or any part thereof, to plaintiffs, although often requested so to do; but the said defendants to pay the same to plaintiffs, or to any one for plaintiffs, have hitherto wholly neglected and refused, and still do neglect and

refuse, to the damage of said plaintiffs one thousand and twenty-
50 two dollars, with interest from the date aforesaid; and therefore they bring this suit, &c.

Thirty-first. For that, whereas, heretofore, to wit, on or about the fifth day of October, A. D. 1867, at the city of New York, in the said southern district, the said defendants then and there doing business as brokers, and copartners, under the firm-name and style of Jay Cooke & Co., were indebted to the United States of America, aforesaid, for the sum of one thousand and twenty-two and $\frac{40}{100}$ dollars, money had and received at the city aforesaid, by them, to and for the use of the United States of America, and of their property, on the said fifth day of October, A. D. 1867. Such money was obtained by said defendants at the city aforesaid from the said plaintiffs, upon the occasion of the said firm having delivered to the said plaintiffs, therefor, what purported to be a certain obligation of the United States aforesaid, known as a seven-thirty note and coupon attached for the principal sum of one thousand dollars, and twenty-two and $\frac{40}{100}$ dollars interest, to wit, a note bearing seven and $\frac{30}{100}$ per cent. interest per annum, and numbered 140,209 A, of the series of seven-thirty notes, issued June 15th, 1865, by the United States aforesaid, together with an interest coupon attached as aforesaid to said note, calling for interest from June 15th, 1867; which note, with coupon attached as aforesaid, was by the said defendants composing the firm aforesaid, at the time they delivered it to the officer of the sub-treasury of the United States aforesaid, professed to be, and by the plaintiffs aforesaid and their officer aforesaid was, when received from them, supposed to be a genuine note, with a genuine coupon attached, of the United States aforesaid; and by the representations and inducement of the said defendants then and there practised, the same was received by the United States and their officer aforesaid as a valid,
51 genuine note, with genuine coupon attached, at the subtreasury of the United States aforesaid at the city of New York, on the fifth day of October, A. D. 1867.

The said note and coupon were in fact counterfeit, and neither of them had ever been executed or issued by the United States of America, their officers or agents, but had been forged and falsely made and uttered, and were no obligation whatever of or upon the United States aforesaid; and were by them, to wit, by their officer aforesaid, received as aforesaid under the belief created by the representations and inducement aforesaid, that the said note with coupon attached was good, and formed a valuable and adequate consideration for the money received by the defendants aforesaid, which was retained from plaintiffs after discovery that the said note and coupon were counterfeit, whereof prompt notice was given to said defendants. And being so indebted, the said defendants in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the said city of New York, undertook and then and there faithfully promised the said United States of America, plaintiffs, to pay to said plaintiffs the said sum of money, to wit, one thousand and twenty-two and $\frac{40}{100}$ dollars, when they the said defendants should be thereunto afterwards requested. Yet the said defendants, not regarding their said promise and undertaking, although often requested so to do, have not as yet paid said sum of money, or any part thereof; but the said defendants to pay the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs to the amount, to wit, of one thousand and twenty-two and $\frac{40}{100}$ dollars, with interest from the date last aforesaid; and therefore they bring this suit, &c.

52 Thirty-second. For that the said defendants, composing the firm aforesaid, were indebted to plaintiffs aforesaid, at the city of New York aforesaid, on the 5th day of October, A. D. 1867, aforesaid, in the further sum of one thousand and twenty-two and $\frac{40}{100}$ dollars, for the said sum by said defendants then and there had and received to and for the use of said plaintiffs; and being so indebted, and, in consideration thereof, the said defendants afterwards, to wit, on said 5th day of October, A. D 1867, at said city, undertook and faithfully promised the said plaintiffs to pay to said plaintiffs the said sum of money when they, the said defendants, should thereunto afterwards be requested. Nevertheless the said defendants, not regarding their undertaking and promise aforesaid, but contriving to deceive the said plaintiffs in this behalf, have not as yet paid the said sum of money, or any part thereof, to plaintiffs, although often requested to do so; but the said defendants, to pay the same to plaintiffs, or to any one for plaintiffs, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs one thousand and twenty-two and $\frac{40}{100}$ dollars, with interest from the date aforesaid; and therefore they bring this suit, &c.

Thirty-third. For that, whereas, heretofore, to wit, on or about the fifth day of October, A. D. 1867, at the city of New York, in the said southern district, the said defendants then and there doing business as brokers and copartners, under the firm-name and style of Jay Cooke & Co., were indebted to the United States of America, aforesaid, for the sum of one thousand and twenty-two and $\frac{40}{100}$ dollars, money had and received at the city aforesaid, by them, to and for the use of the United States of America, and of their property, on the said fifth day of October, A. D. 1867. Such money was obtained by said defendants at the city aforesaid from the said plaintiffs, upon the occa-

53 sion of the said firm having delivered to the said plaintifls, therefor, what purported to be a certain obligation of the United States aforesaid, known as a seven-thirty note and coupon attached for the principal sum of one thousand dollars, and twenty-two and $\frac{40}{100}$ dollars interest, to wit, a note bearing seven and $\frac{30}{100}$ per cent. interest per annum, and numbered 68,735 A, of the series of seven-thirty notes issued June 15th, 1865, by the United States aforesaid, together with an interest-coupon attached, as aforesaid, to said note, calling for interest from June 15th, 1867, which note, with coupon attached as aforesaid, was by the said defendants, composing the firm aforesaid, at the time they delivered it to the officer of the subtreasury of the United States aforesaid, professed to be, and, by the plaintiffs aforesaid and their officer aforesaid, was, when received from them, supposed to be a genuine note, with a genuine coupon attached, of the United States aforesaid; and by the representations and inducement of the said defendants then and there practised, the same was received by the United States and their officer aforesaid as a valid, genuine note, with genuine coupon attached, at the subtreasury of the United States aforesaid at the city of New York, on the fifth day of October, A. D. 1867.

The said note and coupon were in fact counterfeit, and neither of them had ever been executed or issued by the United States of America, their officers or agents, but had been forged and falsely made and uttered, and were no obligation whatever of or upon the United States aforesaid; and were by them, to wit, by their officer aforesaid, received as aforesaid under the belief created by the representations and inducement aforesaid, that the said note with coupon attached was good, and formed a valuable and adequate consideration for the money received

by the defendants as aforesaid, which was retained from plaintiffs after discovery that the said note and coupon were counterfeit, whereof
54 prompt notice was given to said defendants. And being so indebted, the said defendants in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at said city of New York, undertook and then and there faithfully promised the said United States of America, plaintiffs, to pay to said plaintiffs the said sum of money, to wit, one thousand and twenty-two and $\frac{40}{100}$ dollars when they, the said defendants, should be thereunto afterwards requested. Yet the said defendants, not regarding their said promise and undertaking, although often requested so to do, have not as yet paid said sum of money, or any part thereof; but the said defendants, to pay the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs to the amount, to wit, of one thousand and twenty-two and $\frac{40}{100}$ dollars, with interest from the date last aforesaid; and therefore they bring this suit, &c.

Thirty-fourth. For that the said defendants composing the firm aforesaid were indebted to plaintiffs aforesaid, at the city of New York aforesaid, on the 5th day of October, A. D. 1867 aforesaid, in the further sum of one thousand and twenty-two and $\frac{40}{100}$ dollars, for the said sum by said defendants then and there had and received to and for the use of said plaintiffs; and being so indebted, and, in consideration thereof, the said defendants afterwards, to wit, on said 5th day of October, A. D. 1867, at said city, undertook and faithfully promised the said plaintiffs to pay to said plaintiffs the said sum of money when they, the said defendants, should thereunto afterwards be requested. Nevertheless the said defendants, not regarding their undertaking and promise aforesaid, but contriving to deceive the said plaintiffs in this behalf, have not as yet paid the said sum of money, or any part thereof, to plaintiffs, although often requested so to do; but the said defendants, to pay the same to plaintiffs, or to any one for plaintiffs, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage
55 of said plaintiffs, one thousand and twenty-two and $\frac{40}{100}$ dollars, with interest from the date aforesaid; and therefore they bring this suit, &c.

Thirty-fifth. For that whereas, heretofore, to wit, on or about the eighth day of October, A. D. 1867, at the city of New York, in the said southern district, the said defendants, then and there doing business as brokers and copartners under the firm-name and style of Jay Cooke & Co., were indebted to the United States of America aforesaid, for the sum of one thousand and twenty-three dollars, money had and received at the city aforesaid by them, to and for the use of the United States of America, and of their property, on the said eighth day of October, A. D. 1867. Such money was obtained by said defendants at the city aforesaid from the said plaintiffs, upon the occasion of the said firm having delivered to the said plaintiffs therefor what purported to be a certain obligation of the United States aforesaid, known as a seven-thirty note and coupon attached, for the principal sum of one thousand dollars, and twenty-three dollars interest, to wit, a note bearing seven and $\frac{30}{100}$ per cent. interest per annum, and numbered 180,133 A, of the series of seven-thirty notes issued June 15th, 1865, by the United States aforesaid, together with an interest-coupon attached as aforesaid to said note calling for interest from June 15th, 1867; which note, with coupon attached as aforesaid, was by the said defendants composing the firm aforesaid, at the time they delivered it to the officer of the subtreasury of the United States aforesaid, professed to be, and by the plaintiffs

aforesaid and their officer aforesaid, was, when received from them, supposed to be a genuine note, with a genuine coupon attached, of the United States aforesaid; and by the representations and inducement of the said defendants then and there practised, the same was received by the
56 United States and their officer aforesaid as a valid, genuine note, with genuine coupon attached, at the subtreasury of the United States aforesaid, at the city of New York, on the eighth day of October, A. D. 1867.

The said note and coupon were in fact counterfeit, and neither of them had ever been executed or issued by the United States of America, their officers or agents, but had been forged and falsely made and uttered, and were no obligation whatever of or upon the United States aforesaid; and were by them, to wit, by their officer aforesaid, received as aforesaid under the belief created by the representations and inducement aforesaid, that the said note with coupon attached was good, and formed a valuable and adequate consideration for the money received by the defendants as aforesaid, which was retained from plaintiffs after discovery that the said note and coupon were counterfeit, whereof prompt notice was given to said defendants. And being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at said city of New York, undertook and then and there faithfully promised the said United States of America, plaintiffs, to pay to said plaintiffs the said sum of money, to wit, one thousand and twenty-three dollars, when they, the said defendants, should be thereunto afterwards requested. Yet the said defendants, not regarding their said promise and undertaking, although often requested so to do, have not as yet paid said sum of money or any part thereof; but the said defendants, to pay the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs to the amount, to wit, of one thousand and twenty-three dollars, with interest from the date last aforesaid; and therefore they bring this suit, &c.

Thirty-sixth. For that the said defendants composing the firm aforesaid were indebted to the plaintiffs aforesaid, at the city of New
57 York aforesaid, on the 8th day of October, A. D. 1867, aforesaid, in the further sum of one thousand and twenty-three dollars, for the said sum by said defendants then and there had and received to and for the use of the said plaintiffs; and being so indebted, and, in consideration thereof, the said defendants afterwards, to wit, on the said eighth day of October, A. D. 1867, at said city, undertook and faithfully promised the said plaintiffs to pay to said plaintiffs the said sum of money when they, the said defendants, should thereunto afterwards be requested. Nevertheless the said defendants, not regarding their undertaking and promise aforesaid, but contriving to deceive the said plaintiffs in this behalf, have not, as yet, paid the said sum of money, or any part thereof, to plaintiffs, although often requested so to do; but the said defendants to pay the same to plaintiffs, or to any one for plaintiffs, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiffs, one thousand and twenty-three dollars, with interest from the date aforesaid; and therefore they bring this suit, &c.

And the said Jay Cooke, William G. Morehead, Henry D. Cooke, Harris C. Fahnestock, Edward Dodge, and Pitt Cooke, defendants in this suit, by Charles D. Burrill, their attorney, come and defend the wrong and injury, when, &c., and say that they did not undertake or promise, in manner and form as the said plaintiffs have above therefor

complained against them; and of this the said defendants put themselves upon the country. And the said plaintiffs do the like, &c.

Therefore, the issues above joined are ordered by the district court of the United States to be tried at the district court appointed to be held at the court-house, in the city of New York, in and for the district aforesaid, on the first Tuesday of November, 1870.

58 At which day and place last above mentioned, before the honorable Samuel Blatchford, district judge of the southern district of New York, according to the form of the statute in such case made and provided, come as well the above-named plaintiffs as the above-named defendants, by their respective attorneys above mentioned, and the jurors of the jury summoned to try the said issue being called, also come; who to speak the truth of the matters aforesaid, being chosen, tried, and sworn, say upon their oath that the said defendants did undertake and promise, in manner and form, as the plaintiffs have above complained against them; and they assess the damages of the said plaintiffs, by reason of the premises, over and above their costs and charges by them about their suit in this behalf expended, to twenty-three thousand six hundred and thirty dollars and eighty-eight cents, and for those costs and charges to six cents.

Therefore it is considered that the said plaintiffs do recover against the said defendants their said damages, costs, and charges, by the jurors aforesaid, in form aforesaid assessed, and also one thousand nine hundred and forty-nine dollars and sixty-eight cents, for their said costs and charges by the said court now here adjudged of increase to the said plaintiffs, and with their assent, which said damages, costs, and charges, in the whole, amount to twenty-five thousand five hundred and eighty dollars and fifty-six cents.

Judgment signed this 29th day of November, A. D. 1871.

GEORGE F. BETTS, *Clerk.*

59 United States district court.

THE UNITED STATES *vs.* JAY COOKE AND OTHERS. } Bill of exceptions on the part of the defendants.

This action came on to be tried at a stated term of the district court of the United States for the southern district of New York, before the honorable Samuel Blatchford, and a jury duly empannelled, on the 15th day of November, 1870, and other days, until and including the 6th day of December, 1870.

The counsel for the plaintiffs, to maintain and prove the issues on their part, called as a witness—

HENRY H. VAN DYCK, who was sworn, and proved that he was the assistant treasurer of the United States at New York from July, 1865, to July 1869; that the persons named as defendants were partners, under the name of Jay Cooke & Company, in the city of New York, at the times stated in the declaration; that the Government commenced retiring the seven-thirty notes through him in January, 1867.

The witness was asked to state the process that was gone through in retiring such notes through the office of the assistant treasurer in New York.

An objection being taken by defendants' counsel to this question, and argument had, the court announced that for the purpose of this trial it should rule and hold—

60 First. That the assistant treasurer had no authority to use

the money of the United States in receiving or retiring any obligations which were not actually previously issued by the United States.

Second. That the defendants, or other persons, seeking to avail themselves of the benefit of the act of April 12th, 1866, authorizing the retirement of seven-thirty notes, and delivering to the assistant treasurer what purported to be such treasury-notes, must impliedly be held in law as representing such notes to be genuine treasury-notes actually issued by the United States.

Third. That the liability of the defendants to repay to the United States the money taken from them by the assistant treasurer to pay for such notes, is not restricted or affected by any endorsement of such notes by the defendants.

Fourth. That the plaintiffs have a right to recover back, in this suit, any money belonging to it, paid by it through the Assistant Treasurer of the United States to the defendants as the consideration for supposed treasury-notes, not issued in fact by the United States.

Fifth. That in view of the statute of April 12th, 1866, the averment in the declaration that the defendants professed and represented that the notes delivered to the assistant treasurer were genuine treasury-notes, is supported by the mere fact that such notes being notes not actually issued by the United States, were in fact delivered to the assistant treasurer, and paid for by him with the money of the United States without further proof.

61 The counsel for plaintiffs further proved by said witness, that on the several days specified in the blank bills of sale hereinafter mentioned, he purchased from Jay Cooke & Co. the amount and description of notes, at the prices and premium therein mentioned, and that said bills of sale are in the handwriting of defendants' firm, and were presented to the cashier in the office of the witness, together with the notes therein mentioned, and thereupon a check for the amount due, according to such bill of sale, was drawn by the cashier to be presented to the paying-teller of the assistant treasurer.

The first of said bills of sale was marked "Exhibit A, No. 1," dated September 20th, 1867, No. 700, for $544,100; and a copy is set forth in the schedule of exhibits hereto annexed.

The other bills of sale were dated, and for the amounts hereinafter stated, and were the same in all respects as No. 1, except in regard to date, amount of notes, price, and aggregate amount, and all of the said bills of sale were marked as exhibits by the following letters and numbers: that is to say—

Exhibit.	Number.	Date, (1867.)	Amount.
No. 1,	700,	Sept. 20,	$544,100.
" 2,	713,	" 21,	533,600.
" 3,	721,	" 21,	543,000.
" 4,	728,	" 23,	540,010.
" 5,	758,	" 25,	544,310.
" 6,	761,	" 26,	544,400.
" 7,	768,	" 26,	544,310.
" 8,	779,	" 27,	544,500.
" 9,	791,	" 30,	544,450.
" 10,	795,	" 30,	542,950.
" 11,	803,	Oct. 3,	543,250.
" 12,	810,	" 4,	543,205.
" 13,	824,	" 5,	543,292 $\frac{50}{100}$
" 14,	830,	" 8,	540,000.

62 The witness further stated that at the times above mentioned, he had money of the United States in his possession as assistant treasurer, out of which the checks given for said bills were paid, and that such money consisted of bank-notes of national banks, notes of the United States, gold and silver.

JAMES F. RUSSELL, a witness for the plaintiffs, was sworn and testified—

That he is a clerk in the subtreasury of the United States, in New York, and has been since November, 1863, and his duties were to receive seven-thirty notes, as presented for purchase or conversion, and to have a general supervision of their disposition; that during the time covered by said fourteen bills of sale the defendants sold seven-thirty notes to the assistant treasurer, and that, according to the customary mode of doing business, the bills were accompanied by the packages of notes, which, when handed to the witness, were handed by him to examiners and counters, and a check for the amount of the ticket given by him, which check was drawn by the witness upon the assistant treasurer at New York; that the notes, after being cancelled by punching out the signature of the treasurer and the other signatures of the note, were forwarded to Washington by express in packages twice a week; that no record was kept in the office in New York of the several notes received by them, either of the number of the note or of the person from whom it was received, nor was any list required to be handed in by parties presenting notes.

JOHN IRWIN, a witness for the plaintiffs, was sworn, and testified—

That he is connected with the Treasury Department as a clerk, and in the fall of 1867 was in the loan branch of the Secretary's Office, in charge of the redemption of the seven-thirty notes, and his duties
63 were to supervise the general business of the redemption office, and to see that the notes in that office were properly counted and checked off; that as the packages of the notes were received by the express they were entered in a book; that the witness received such packages from the head of the room, and turned them over from time to time to the examining clerks for counting and examination; that he made no entry of their receipt; that the entries were made by the different persons who happened at the time to be at the head of the room when the packages came in; that Mr. Andrews was in charge of the room at this particular time.

The witness, being shown eighteen notes, hereafter marked "C 1 to C 18," says: "I know that these eighteen notes formed a part of eighty notes which were given by me, on October 12th, 1867, to the corresponding-clerk of the loan branch, for return to New York; that a portion of the eighty I took out of the cases, of which I have made a memorandum on the back of each note; the other notes were handed to me by different clerks, from whose desks they came. I made the memorandum of the number of the cases upon all but four of these notes, but I cannot say which of them I withdrew myself. I cannot say whether the notes I withdrew are a part of these eighteen. When I handed the eighty notes to the corresponding-clerk, I made a list of them, and took the receipt. I have that list entered in the small book now produced marked 'Ex. B,' for identification. At the time these eighteen notes passed through my hands they bore the stamp of Jay Cooke & Co., sufficiently to satisfy me that it was their stamp; it was in printed letters, and contained the words, 'Pay to the Secretary of the Treasury, for redemption. Jay Cooke & Co.'"

On cross-examination, the witness testified that the cases to which he referred were not made up by himself; sometimes there would
64 be more than one package in a case, and sometimes more than one case would arrive in a day. "I had nothing to do with making up the case or numbering it, but took it exactly as it came to me with the number; and that was my first acquaintance with the package. I have no personal knowledge of the packages in that case—if there was more than package in that case—or whether it came from New York or any other place. I took the word of the man who received it at the end of the room as to the place whence it came. When the package came to my end of the room it was wrapped up in brown paper, and the amount on the outside and the number of the case; the wrapper was removed, the package was counted, and a schedule made of the denominations, and if that agreed with the amount on the inside of the package, it was taken down, without the outside wrapper, to the punching room, as the first process after counting and examination. It was taken down to the punching-room without the outside wrapper, either tied up in a bundle or in a box."

On being shown the eighteen notes above mentioned, the witness stated he could not tell whether the appearance of the red mark on the back of the notes is different from what it was when they passed from his hands in 1867, except that the back of the note is more soiled and that the stamp is rendered a little more indistinct. "I cannot see any difference in the stamp."

On his re-examination by plaintiffs' counsel, witness says: "Some of the eighty notes were taken from the packages as they came from the express company.

"The first suspicion in regard to the character of these notes was on October 5th, 1867, on which day a note was brought to my desk, which was reported to be a duplicate of a note already in. All the notes were returned to New York on the 12th October. The book to which I referred contains a record of the numbers and letters on the eighty
65 notes returned. I got receipts for these notes. The initial-letter 'M' in the book is the initial-letter of the name of the officer who took these notes; his name was Meloy; that letter 'M' was made by him. The first column in the book contains the date when I gave the notes to Meloy; the second contains 'M,' the initial of Meloy's name; the third contains the denomination of the note; and the fourth, the number.

"From an examination of the numbers and letters, I am able to state, and do state, that these eighteen notes were delivered by me to Meloy, the corresponding clerk, on the 12th of October, 1867, for return to New York.

"These are the numbers, letters, amounts, and dates of the several notes, which were subsequently marked 'C,' in the following order:

'C'	1,	No. 68,446,	B.
"	2,	" 68,466,	B B.
"	3,	" 68,649,	A B.
"	4,	" 140,121,	A B.
"	5,	" 160,236,	B B.
"	6,	" 160,452,	B B.
"	7,	" 160,484,	B B.
"	8,	" 180,167,	A B.
"	9,	" 180,105,	A B.
"	10,	" 68,537,	A B.
"	11,	" 160,130,	B B.

" 12,	"	68,671,	A B.
" 13,	"	160,182,	B B.
" 14,	"	68,715,	A B.
" 15,	"	180,107,	A B.
" 16,	"	140,209,	A B.
" 17,	"	68,735,	A B.
" 18,	"	180,133,	A B.

"These several notes were stamped on the back. I have already stated that I saw sufficient of the stamp to satisfy me that it was the
66 stamp of Jay Cooke & Co. At the time of returning the notes to the assistant treasurer, all the eighteen notes bore the stamp of Jay Cooke & Co., sufficient to enable me to select them."

JAMES F. RUSSELL, being recalled by the plaintiffs, produced fourteen checks, drawn by him, which he found in the office of the assistant treasurer in New York, and which bear the cancelling-stamp of payment, with the date when paid. The first two of said checks were marked " D 1."

The other checks were in the same form, excepting dates and amounts, and all of said checks were marked as follows:

2 checks, marked	"	D 1,"	covering	bill of sale,	A	1,	No.	700.
2	"	"	" 3,	"	"	" 3,	"	721.
2	"	"	" 6,	"	"	" 6,	"	761.
2	"	"	" 7,	"	"	" 7,	"	768.
2	"	"	" 8,	"	"	" 8,	"	779.
2	"	"	" 10,	"	"	" 10,	"	795.
2	"	"	" 14,	"	"	" 14,	"	830.

Counsel for plaintiffs also offered in evidence so much of the entries in the book marked " B," produced by the witness Irwin, as relates to the eighteen notes marked " C 1 " to " C 18," and as to the date of October 12th, the amounts of the notes, the letters of the notes, and as to the letters M, and as being the receipts identified and spoken of by Mr. Irwin as taken from Meloy. The court admitted the same, and defendants' counsel excepted.

LEWIS L. SCOVILL, a witness for the plaintiffs, being sworn, testified that he was book-keeper in the conversion department of the assistant treasurer's office in 1867. The checks now produced were given by witness as such book-keeper, in payment for the purchase of some
67 of the seven-thirty notes mentioned in the bills of sale marked "A," and were delivered to the person bringing the bill of sale.

The checks were offered in evidence by the plaintiffs' counsel, and defendants' counsel objected. Objection was overruled, and defendants' counsel excepted.

Checks were in the same form as those previously mentioned, with the exception that they were drawn by the witness Scovill.

They were marked as follows. They were also cancelled and marked " paid" with the stamp of the assistant treasurer:

2 checks, marked	"	D 2,"	covering	bill of sale,	A	2,	No.	713.
2	"	"	" 4,	"	"	" 4,	"	728.
2	"	"	" 5,	"	"	" 5,	"	758.
2	"	"	" 9,	"	"	" 9,	"	791.
2	"	"	" 11,	"	"	" 11,	"	803.
2	"	"	" 12,	"	"	" 12,	"	810.
2	"	"	" 13,	"	"	" 13,	"	824.

Witness further testified that he kept a book in which the amounts purchased of seven-thirties were entered from day to day. It contains the dates, names of parties from whom purchased, series of notes, interest due, rate of premium, amount of premium on the whole purchase, and whole amount of the purchase-price, and aggregate amount of purchases remitted to Washington. It is called "Account of purchases of seven-thirties."

Book produced marked "E." On cross-examination, witness testified that the entries in this book were made from the bills of sale, such as those introduced marked "A." "I had no knowledge of the transactions other than that I found from the bills handed to me, and from which I made the entries in the book. I had nothing before me except the bills of purchase. Where the checks were drawn by Mr. Russell, the notes themselves did not come before me. The bills were
68 handed to me by the chief of the department, Mr. Russell. Aside from the cases in which I drew the checks myself and received the seven-thirties, this book is a compilation of the transactions, based on the memoranda or bills presented to me. At the time I made the entry of the aggregate amount sent to Washington, I had no knowledge of the amount sent. I added up the amounts, and made a schedule of them, to show how large the packages should be. There was an estimate made what ought to go by each package to Washington. I had nothing to do with making up the package and with sending it."

On redirect examination: "I made up an account which accompanied each package. The papers now produced are such accounts, made up by me; the account contains same items as the book."

The plaintiffs' counsel offered and the court admitted so much of the book as relates to the fourteen memoranda marked "A," and no more; and a copy is set forth in the schedule of exhibits hereto annexed.

JOHN P. BIGELOW, a witness for the United States, being sworn, testified that since 1864 he has been, and still is, in the loan division of the Secretary's Office, Treasury Department, and for a year past has had charge thereof.

The accounts produced by the last witness being shown to witness, he says: I find my initials on these. They were put on when the statements were received. It was a part of my duty to keep these accounts. I have no personal knowledge of the receipt of the notes mentioned in the accounts, or their comparison with the accounts. I was absent at the time these notes were received. The accounts were marked as follows:

69

F 1, F 2,	covering	713,	and found	in	A 1. A 2.
F 3,	"	721,	"		A 3.
F 4,	"	728,	"		A 4.
F 5,	"	758,	"		A 5.
F 6,	"	761,	"		A 6.
F 7,	"	768,	"		A 7.
F 8,	"	779,	"		A 8.
F 9, F 10,	"	791, 795,	"		A 9. A 10.
F 11,	"	803,	"		A 11.
F 12,	"	810,	"		A 12.
F 13,	"	824,	"		A 13.
F 14,	"	830,	"		A 14.

The accounts were offered in evidence and objected to; and the court admitted such of the entries in the accounts as were to be found in memoranda A 1 to A 14, and a copy is set forth in the schedule of exhibits hereto annexed.

WILLIAM H. ANDREWS, witness for the plaintiffs, being sworn, testified that in October, 1867, he had charge of the loan branch of the Treasury Department of the Secretary's Office, and in that capacity sometimes received packages of seven-thirty notes, sent from New York by express, and in such cases gave receipts to the express company. When the packages were received they were passed to the clerks for a verification of the amount said to be contained in them. They took the wrappers from them and saw that each package made up the amount stated to be contained in it, and then verified the general packages. These packages contained inside several smaller packages, which were fastened by a strap, on which was endorsed the name of the person from whom the notes purported to have been received. The packages were handed over to clerks for verification, which was made by
70 counting the notes and seeing that they agreed in amount with the amount on the strap. Then they were compared with the accounts sent on with them; then one of the clerks examined the notes to see if the endorsement was properly put on. And where the endorsement was indistinct and could not be read, they were returned to Mr. Van Dyck to get the proper endorsement. They were then arranged according to the denomination and then numerically, and then entered in the numerical register; that is, they were checked off as redeemed. I remember the detection of the alleged counterfeits in November, 1867. These notes were brought to me, and we examined them, sent them down-stairs to the Printing Bureau, and we notified the Secretary, and they were sent off to Mr. Van Dyck. I did not examine the endorsements specially, nor make any marks so as to identify the notes.

On cross-examination, the witness testified: "At this time there were some fifty-three or fifty-four clerks and messengers in our room. I did not, in all cases, receive the packages which came by express; sometimes other persons did. The clerk who examined the packages kept no book and made no entry of the result of his comparison.

"In the process of examination the large package and the smaller packages of notes were broken. After having passed through the comparison, they were put together again and sent to the Treasurer's Office. These notes were punched before they passed the numerical register, between the time of verification and their entry on the numerical register. When the packages were opened, the straps were preserved only until the verification of the amount, and then they were destroyed."

On his redirect examination, the witness testified that "there was a book kept, in which the series of notes of different issues and the number of each denomination and the amount were entered. That book
71 was kept by Mr. Irwin. When the notes are counted in a package containing different notes of different denominations, the number of the notes is put down in a column, showing how many we had redeemed; and if the amount opposite corresponded with the whole package, it proves the redemption by the denominations. This book is merely an entry of the gross amount in the packages—a statement of the different denominations of different series, for the purpose of proving their redemption by the books of issue."

The witness, being shown a receipt-book from the Adams Express

Company, identified the following items as having been receipted by himself, of the following dates and amounts:

Date.	Amount.
September 23, 1867	$2,686,600
" 23, 1867	1,074,850
" 27, 1867	5,296,200
" 30, 1867	5,654,150
October 1, 1867	2,647,700
" 5, 1867	1,246,050
" 7, 1867	3,534,000
" 8, 1867	1,434,500
" 10, 1867	950,000

EDWIN L. JONES, for the plaintiffs, being sworn, testified: "In October, 1867, I was clerk in the loan branch of the Secretary's Office, Treasury Department. My duties were to examine the cases of seven-thirty notes sent there by Mr. Van Dyck—to examine the notes to see if the accounts were correct, and that the notes had the proper endorsements. When I found that the amounts were correct and that they were properly endorsed, I took them to the cancelling-room to be punched. If the endorsement was defective, I gave them to Mr. Irwin—in charge of that division of the room—for the purpose of being returned to New York,
72 or where they came from. The stamp used by Jay Cooke & Co. contained the words: 'Pay Secretary of the Tresury for redemption' (or 'conversion,' as the case might be, signed) 'Jay Cooke & Co.' It was generally a bright red, pretty large letters. I recollect that the first detection of the counterfeit seven-thirty notes was made on the 5th of October, I think. I think that the first suspicion was on the 1st of October. The numerical register appeared to have one note checked on it of the same number as one that I saw. I will not say it was that day, but it was about that time. I looked that note up, and found it to bear the same number. There were quite a number that came in that I saw that had duplicate numbers; I think about sixty. At the time there was a suspicion that the notes were counterfeit, I took out of the packages three of these notes, marked 'C 16,' 'C 17,' 'C 18,' and handed them to Mr. Irwin. The package from which I took them was marked 'Jay Cooke & Co.' I examined the stamped endorsement at the time; they were stamped 'Jay Cooke & Co.' I can read some of the endorsements on the notes now. I have no mark on any of these notes to identify them. I examined the whole of the eighty notes." [The witness examined the notes, and stated that he could read, and witness did read, name of Jay Cooke & Co., stamped on the back of each of the notes, except C 13, which is so blurred that he cannot make it out positively.] "Other people besides Jay Cooke & Co. used the same sort of stamp, with different colored inks. One of these notes, namely, C 11, I selected from the cases that had been put away."

ALBERT W. STEELE, witness on the part of plaintiffs, testified that he is engaged in the office of the assistant treasurer in New York. In 1867 he was counter and examiner of the seven-thirties in the conversion department, and his duties were to count and examine
73 notes received there for purchase or conversion; was engaged in those duties in October, 1867. "My particular duty in regard

to stamps was to examine and see if they were all visible and plain and if not, to have them stamped over. I am acquainted with the stamp of Jay Cooke & Co. It was a printed stamp, different-sized letters on it, some larger than others, 'Jay Cooke & Co.' larger than the rest; it was a red-ink stamp. When I found a note not properly stamped, I sent it back either to Jay Cooke & Co., or to whoever it came from, or had some one come over from their office to stamp them. I cannot say that I ever saw notes come from Jay Cooke & Co. becoming so illegible from immediate handling, but I have seen stamps so illegible that I had to throw them out."

The notes C 1 to C 18 being shown to the witness: "I hardly think I would have passed any of these as they now appear. I would rather have the endorsement plainer. If they appeared as they now appear, I would have thrown them out for a plainer endorsement."

JOHN IRWIN, being recalled, testified that he examined the eighteen notes, C 1 to C 18, and that he can read the whole, or some part of the stamp of Jay Cooke & Co., on all except C 13; and the witness read the same to the jury; that C 13 was so blurred that he could make nothing out of it; that he had had two years' experience examining endorsements and stamps on treasury-notes.

JOHN T. BIGELOW was recalled: "I have had experience in the examination of stamp-endorsements. I know thatthis kind of stamp used by Jay Cooke & Co. is liable to become indistinct and obliterated from handling of the notes, especially in warm weather. The note now
74 shown me I saw the day before yesterday, with the whole of the word 'redemption' upon it, and the obliteration of a portion of that word was caused by rubbing it with my thumb."

HENRY H. VAN DYCK, witness for plaintiffs, recalled, testified: "I received seventy-eight notes from the Secretary of the Treasury. I was instructed to notify the parties from whom the notes had been received that they were counterfeit, and that they must refund the money paid for them, or substitute other notes for them. This was on the 13th of October, 1867. I notified the defendants. They came in, looked at the notes, and said they didn't know whether they were genuine or whether they were counterfeit; they asked for time to examine the question what their liabilities were, and to ascertain from whom they had received them. I gave them that time. I saw them every day, the one or the other. On the 18th of October, I think, I served a formal written notice upon the parties; that is, I signed a notice and served it by my deputy, Robert McCartee. It was about the 17th of October, I think. Neither at the first interview nor at any other did the defendants say anything on the subject of these notes not being the notes sold by them to me."

On cross-examination, witness says: "My notification to the defendants, on the receipt of the seventy-eight notes from Washington, was verbal—that is, I sent a boy to tell them, asking them to come to my office. Mr. Dodge and, I think, Mr. Fahnestock came. I am reasonably sure that Mr. Fahnestock came. I have no doubt but Mr. Dodge did. I don't know whether Mr. Cooke came or not; he is the only other member of the firm. Cannot say whether Mr. Dodge and Mr. Fahnestock came the same day."

"Was it Mr. Fahnestock or Mr. Dodge who said they wanted time?"

75 "There were perhaps a dozen persons in at the time, all of

them interested; there were a great many there. I cannot say that Fahnestock personally, or Dodge personally, asked me to give them time. I don't recollect any conversation with Dodge or Fahnestock, distinct and separate from other general conversation with gentlemen in the office. I think I had more conversation with Mr. Wood, of Vermilye & Co., than with any other person. I cannot say that I had any specific conversation with Jay Cooke & Co. in regard to the matter.

"There was a general request, on the part of the body of the persons interested in this class of securities, that time should be allowed to examine into the question. They did not take up the notes; and, about the seventh day, I made a written demand. After the first interview I did not have any personal interview with the defendants with respect to this particular matter. I kept these eighty notes in my drawer a year or two. I sent them off to Washington, and then they came back to my possession about a year afterwards. I personally examined the notes the first time they came. I looked at them. I made no record of them. When they were sent back the second time I knew nothing about them but that they were sent back in a package addressed to me, and I made no memorandum in regard to them at the time. I left the subtreasury office in 1869, and left the package of notes there. General Butterfield succeeded me. I suppose that the notes were handed over to him, but I am not certain. My impression is that I returned everything unsettled to Washington, these among the rest. General Butterfield was succeeded by Charles J. Folger, who was succeeded by Thomas Hillhouse, the present subtreasurer.

ROBERT MCCARTEE, witness for the plaintiffs, being sworn, testified that in October, 1867, he was deputy in the subtreasury in New
76 York. Recollects of hearing of the return of certain alleged counterfeit notes from Washington. It did not fall within his province to have personal knowledge of it. On looking at the paper shown him, he says that he recollects on the 17th of October, 1867, he served a notice on Jay Cooke & Co. This paper is a copy of the body of the notice; lacks the address. "Attached to it was a schedule of the notes, as I recollect it, upon which the Treasurer reclaimed."

On cross-examination, witness says he does not know when the eighty notes were sent back by Mr. Van Dyck to Washington, but he (witness) left the office on the 1st of July, 1868. Recollects of seeing some of these notes in the subtreasury as a part of the assets of the office; thinks the notes were there in some shape when General Butterfield turned over the assets to Judge Folger. Witness knows nothing of the identity of the notes; does not know if these are the notes that Mr. Van Dyck got in 1867. "I never handled them so as to be able to identify them."

Plaintiffs' counsel hereupon read the notice in evidence, in the following words, and a copy is set forth in the schedule of exhibits hereunto annexed.

WILLIAM A. MELOY, for the plaintiffs, sworn:

In 1867 I was in the Treasury Department. I left in January, 1868 I was corresponding clerk of the loan branch. I prepared the correspondence between the Secretary of the Treasury and the assistant treasurer in regard to these notes. I have seen here a letter-book containing the press-copies of that correspondence. This is the book. I sent a letter and schedule with the notes to Mr. Van Dyck. The notes

were upon my table, enclosed in an envelope, by me, with the letter and schedule. I have a press-copy of the letter here. My recollection is, that there were seventy-six notes, or seventy-eight, I cannot state.

77 Cross-examined:

"I did not write the list; I think I compared it, because that was my practice. The original list was written by a young man; I am not certain whose it is. I thought at first it was Mr. Irwin's. I see my own handwriting in one instance in this list in reference to one note. I find another entry of mine also, the number of another note, the number and letter of one of the notes. I don't know whose writing the rest of the list is.

Book Exhibit B being shown to witness, he says: "The initials 'M' are made by me. It indicates that I received the note described in the line. The notes I received from Mr. Irwin I returned to New York."

HENRY H. VAN DYCK recalled:

"I have the letter which I received from the Secretary with these notes, but I have not the schedule that accompanied them. I recognize this paper as a copy of the list forwarded to me with the letter of October 12th, 1867."

On cross examination, he says: "When these notes were received with the letter, I did not make a comparison of the notes with the schedule. I looked at both; I did not compare them. I made no memoranda at the time in regard to the notes."

Witness hereupon desires to correct his testimony, and states: "I think I said that Mr. Dodge and Mr. Fahnestock came into my office at the time the notes were received from Washington; my present recollection is that Mr. Dodge was present; that he came into the office, and that I sent over or he took over one of the notes for Mr. Fahnestock's inspection. Mr. Dodge was the man that I always purchased seven-thirties from. The return of the eighty counterfeit notes was a matter of great excitement, and the office was filled with persons who came to look at the counterfeit notes, each man having seven-thirties think-

78 ing he might have one among them, and wanting to see how he could distinguish the counterfeit. I cannot recollect what Mr. Dodge said precisely."

THOMAS G. JONES, for the plaintiffs, sworn. "In 1867 I was engaged in the loan branch of the Secretary's Office. My duties were various; part of the time I was examining seven-thirties. I did not examine any after the 1st of August, 1867." Eighteen notes, marked "C," being shown, he says: "I selected two of these by marks put upon them made by me; they are marked 'C 1' and 'C 4.' The memorandum I made is '349 B' on the back of C 1, and '355 B' on the back of C 4. I am able to read the stamp of Jay Cooke & Co. on the back of both these notes. I had nothing to do with the rest of the eighteen notes. I did not select any others of the eighteen." The remaining notes marked "C" being shown the witness, he says that he can read the words "Jay Cooke & Co.," or some portion of them, on all the notes except C 13 and C 15.

Being cross-examined, he says: "I have no present recollection as to the appearance of the stamp on these two particular notes, C 1 and C 4."

On the application of the plaintiffs' counsel, the court permitted the plaintiff's counsel, against the objection of the defendants' counsel, to read in evidence that portion of the letter-press copy marked "J" in

the schedule, which contains the numbers of the eighteen notes, as to numbers and letters in the list that are identical with the numbers and letters set forth in the declaration.

Plaintiffs' counsel offered in evidence the eighteen alleged counterfeit notes marked "C 1" to "C 18." Defendants' counsel objected to the evidence, on the ground that there was not sufficient evidence to connect the defendants therewith.

Objection overruled, and defendants' counsel excepted.

79 HENRY H. VAN DYCK recalled: "Before the seven-thirty notes were funded, it was usual to endorse the certificates of indebtedness by written endorsement. In the case of the seven-thirties this was found to be burdensome, and I was authorized by the Secretary to agree with the various dealers in New York, that if they would regard a stamp on the back of the notes as equivalent in all things to a written endorsement, they might be permitted to stamp the notes. I had a letter from the Secretary, which I think I showed to some member of the defendants' firm. I am not certain whether I showed the letter or not. I stated the substance of the letter, and they assented to the arrangement; and thereafter they used a stamp instead of writing their names on the seven-thirties. I did not require any deposit or lodging of any specimen of the stamp. I think the stamp used by the defendants had three lines. 'Pay Secretary of the Treasury,' I think, was the first line; 'for redemption,' the second; and 'Jay Cooke & Co.' the third; the only point I ever made upon it that it had Jay Cooke & Co.'s name on it."

On cross-examination the witness says: "I am not entirely certain that there was a letter from the Secretary of the Treasury, but that I may have got my instructions at a personal interview."

HARRIS G. FAHNESTOCK, being sworn, testified that he was one of the defendants; that the defendants kept a record of the numbers of all seven-thirty notes received by them from all sources, and the date and name of the party from whom the same were purchased, and also kept a record of the numbers of all such notes sold by them, and to whom and when; but they kept no record of the notes sold or transferred to the assistant treasurer of the United States.

80 The witness, on the call of the plaintiff's attorney, produced three books, marked by the court as follows: Two registers, marked "J 1" and "J 2;" and letter-press book, marked "J 3."

Plaintiffs' counsel offers in evidence from the letter-book the following letters found on pages 768, 769, 770, 777, 829, 830, 831, 832, 833, 834, 837, 840; and copies of the same are set forth in the schedule of exhibits hereto annexed.

Witness thereupon testified that the defendants received the money for the notes mentioned in bills A 1 to A 14. "I had nothing to do with receiving the money from the subtreasury; that was done by the clerks. I had nothing to do with receiving the notes. I don't know personally whether any one of the notes went into the subtreasury. I have no connection with the transaction. I know nothing, except from the letters, that we had such notes in our possession. I don't know, except from the letters, that any such notes were turned over to the Department. I don't know, except from the letters, that we ever received any money from the Department for the notes mentioned in the letters."

GEORGE R. WATERS, witness for the plaintiffs, being sworn, testifies that he is in the employ of the defendants, and kept the register

marked "J 1," in part; that in that part which covers the period between the first of September and the last of October he kept it mostly, but a part of the entries are made by somebody else. This book shows the notes received by the defendants, and from whom they came.

On examining the book, he finds an entry, on page 137, of the receipt from James T. Brady & Co., on September 27th, 1867, of five notes, Nos. 68,649, 140,121, 160,236, 160,452, 180,165; on the same page, from
81 Wm. Ridgley & Co., September 27th, 1867, Nos. 68,446, 180,105, 160,484; on page 139, from Baker & Kitchen, September 28th, 1867, 68,715; on page 141, from Ira B. Mackay & Co. September 30th, 1867, 68,537, 160,130, 68,761, 160,182; on page 148, from Drexel, Winthrop & Co., October 5th, 1867, 180,133; on page 147, from Rodman, Fisk & Co., October 4th, 1867, 140,209, 68,735; on page 127, Maxwell & Graves, September 18th, 1867, 68,466—"C 15," No. 180,107, not found, one of Maxwell & Graves'.

These books do not show that these seven-thirty notes were sold to the assistant treasurer. Defendants kept no numbers in their books of the notes sold to the assistant treasurer. No numbers were entered in their books in connection with the entry of the sale. The entry merely was of the gross amount. "We kept entries of the numbers of bonds or notes only, in cases when they were sold to parties other than the Government."

GEORGE W. CASILEAR, witness for the plaintiffs, being sworn, testified: "I am now superintendent of engraving and transferring in the Treasury Department. I have been connected with the Department eight years. The work on the seven-thirties was got up under my supervision. The plates were engraved in the Treasury buildings under my superintendence. I did some of the engraving myself on these plates."

Plaintiffs' counsel offered to show the eighteen notes, marked "C 1" to "C 18," to the witness, to examine in regard to the genuineness of such notes.

Defendants' counsel objected to the evidence, on the ground that the identical notes are not traced to the defendants in this action.

The court overruled the same, and defendants' counsel excepted.
82 The witness thereupon testified: "I made the small panels which connect the lettering on the borders with the geometrical lathe-work of the plates from which the genuine notes are printed—about the centre of the note, on the lower border and on the upper border on the right-hand side."

Being shown a note, purporting to be a seven-thirty note for $1,000, dated June 15th, 1865, No. 160,182, he says: "That is one of the second series, and a genuine note. That is all the engraving there on the plate; the rest was done by the transferring process. I am an engraver by profession, and have pursued that employment for thirty years. For the second series I think we got up three plates of four subjects each. I think, in all probability, these plates were all altered from the second to the third series. I know we altered some plates, but whether we altered them all or not I don't know. We made plates, and altered them from the second to the third series; that is, we altered the date of the act. The bed-plate was never altered except in one little line of script. The second series were printed from three plates of four subjects each—check-letters A, B, C, D. Each plate had four notes; the first plate was lettered A, B, C, D; the second plate had the same letters, with a small B under each; the third plate, the same letters, with a small C under each."

Q. "From your observation of these notes, and your knowledge of the genuine plates, were these notes, C 1 to C 18, printed from these plates?"

(Question objected to.

Objection overruled. Defendant's counsel excepted.)

Q. "Were these eighteen notes printed or not from any plate referred to by you, as having been got up by you, under your supervision,
83 in the Treasury Department, from which seven-thirty notes of the second series, used by the Government, were printed, so far as you know?"

(Same objection. Overruled, and exception.)

A. "They were not."

The treasury-note "68446 B" being shown to witness, he states: "That is a genuine note, printed on the second plate of four subjects each, and the second note upon the plate," (note marked "K 1.") Another note, "No. 180133 A B," being shown to witness, he says: "It was printed from the second plate, and the first note on the plate," (marked "K 2.") Another note, "No. 180107 C B," being shown to witness, he says: "It is printed from the second plate, and the third subject on the plate," (marked "K 3.") And another note being shown to witness, "No. 160236 D B," he says: "It is printed from the second plate of four subjects each, and the fourth note on the plate," (marked "K 4.")

All the eighteen notes marked "C" purport to have been printed from the second plate, and to be either the first or second notes on such plate.

Fourteen other notes are shown to witness, which he pronounces to be genuine, and which, with those previously produced, are marked "K 1" to "K 18," respectively; the notes marked "K" corresponding in numbers with the notes marked "C," being marked as follows:

Numbers.	Letters.	Exhibits.	Numbers.	Letters.	Exhibits.
68446	B B	C 1	68446	B B	K 1
68466	B B	C 2	68466	B B	K 18
68649	A B	C 3	68649	A B	K 16
140121	A B	C 4	140121	A B	K 11
160236	B B	C 5	160236	D B	K 4
84 160452	B B	C 6	160452	D B	K 14
160484	B B	C 7	160484	D B	K 7
180167	A B	C 8	180167	A B	K 6
180105	A B	C 9	180105	A B	K 5
68537	A B	C 10	68537	A B	K 10
160130	B B	C 11	160130	B B	K 9
68671	A B	C 12	68671	A B	K 17
160182	B B	C 13	160182	B B	K 15
68715	A B	C 14	68715	C B	K 13
180107	A B	C 15	180107	C B	K 3
140209	A B	C 16	140209	A B	K 8
68735	A B	C 17	68735	C B	K 12
180133	A B	C 18	180133	A B	K 2

Witness further testified: "I have examined these alleged counterfeit notes several hours with a glass, looking thoroughly at each part." The witness takes C 1 and K 1, and says: "There are differences between these notes. The lathe-work border on the face of the genuine note is geometrical lathe-work, and in the counterfeit is made by hand.

In my eyes, the star of eight rays in the lathe-work, in C 1, looks to me to have been done by hand, and in K 1 by lathe. The enclosures containing the figures '1,000' are called counters. There is a difference between the black counters in these two notes; the spurs between the ciphers are wider apart in the genuine than in the other, and the imitation lathe-work is different; that in the genuine being done by geometrical lathe, and in the other by hand. This counter is made up of five sections, and where they join in four places there is a small elongated dot, as small as can be, which is seen in the genuine and not in the other. This white dot is made by the absence of work. The shading is somewhat different between the two; at the left hand, over the figure '1,' is a black dot, which in the genuine is larger than in the other.

85 The green counters on the front and back of the note containing the figures '1,000,' are made from an original bed-piece; the roll is taken up, and you can duplicate the rolls to any extent you please. In the genuine, the work of the green counter is lathe-work, and in the other it is done by hand. If you follow it closely with a glass, you will see that the one does not possess the purity of work that the other does; on the lower ball of the figure '1,' on the left-hand side, there is a spur; it resembles a heart in the lathe-work. This ball, on the left-hand side, runs into the heart on the genuine, and on the other it does not, but leaves a light running around it. I do not see any great difference between the work in the anterior of the heart, on the two notes.

"In the green counter of the upper left-hand corner of the figure '1,' there is a heart, in the body of which is a trefoil with a white outline. In K 1, the white edge of that trefoil that is nearest to the figure '1' is very close and almost touches it. You can scarcely see any green space or dark space between this edge of the white outline of the trefoil and the white part of the figure '1;' but in C 1 the edge of the trefoil is a considerable distance off, so that you can see a broad dark-green space between the trefoil and the edge of the figure '1.'

"The figure '1' and the first of the ciphers are nearer together in the counterfeit; there is a shade over the top tail of the figure '1,' and in the genuine is right by the small figure in the heart and in the centre; there is a difference between the figure and the shade. There is a difference in the panel containing the words 'interest at twenty cents per day;' the spurs of the letters are different, being longer and more pointed in the counterfeit. The tails of the printed 'R' are different, being longer than the genuine, and narrower in the counterfeit. As to the other panel, 'three years after date,' the extreme hair-line forming the lower portion of

86 the panel comes up higher in the counterfeit than in the genuine. I don't know that I can describe to you exactly, but I can show it to you. I see that the lower hair-line of the panel, on the left-hand side, comes up further; that is, approaches the top of the panel more in the counterfeit than it does in the other. The spurs forming the top of the 'T,' in the word 'Three,' are larger in the genuine, and form a different angle. In making my examination, I am using a magnifying-glass; I always do use a glass. In the red seal the rays are deeper in the counterfeit than in the other, and form a different angle. In the genuine they are more blunt; in the other they run to a longer point. The seal of the counterfeit looks larger; I don't know how it would appear by measurement, the rays being so much deeper in the counterfeit; the portion forming the angle of the square and the stars on the shield are a different shape; the shank of the key in the counterfeit is narrower than in the genuine. I don't see any other striking differences. The tail of the 'R' in the word 'Amer.' in the seal, forms a different angle. In the title, 'The

United States,' in the ruled lines composing the shade of the letter 'S' (the last letter) over the upper spur, are some six or seven lines in the counterfeit, while in the genuine that shade is composed of only three; in the letter 'U,' in the genuine, in the ruled shading, there are five or six lines, while in the counterfeit there are only four; the lower part on the hair-line of the spur of the 'D' has two lines in the counterfeit, while in the genuine there is only one. In the vignette of 'Justice' I observe, under the arm where she leans upon the shield, in the genuine, the letter 'P' in 'Pluribus' is distinctly seen; whereas, in the counterfeit, it is not defined, the loop of the 'P' being covered up. The form of the shades and treatment is different; in the light drapery the lines are different. I don't think I could describe it intelligibly to the court.

87 The eagle on the shield, in the genuine, has feet or claws; in the other there are none. Between the right and left knee of the figure there is a long dark shadow, in the genuine, running from right to left, which makes a light fold in the drapery below this dark shadow—which light on the drapery, in the genuine, is one broad line and one narrow; whereas, in the counterfeit, there are four or five heavy lines. The vignette is a very close copy of the genuine. I don't think I could point out any other differences.

"In the panels on the back of the notes containing the words 'Pay the bearer,' the cycloid-work is entirely different; this cycloid-work is done with the geometrical-lathe; there is a difference in the appearance of the shade. This vignette was bought of the American Bank-Note Company, and first appeared on the interest-notes issued by the Government. We did not engrave that in the Department; all the other work was done in the Department, with the exception of the lathe-work counter.

"In the panel I spoke of as made by me, there are more lines in the counterfeit than there are in the genuine, being thirteen in the genuine and fifteen in the counterfeit. The pattern forming the cycloid, on the upper tablet on the back of the genuine, is perfectly straight; whereas, in the counterfeit, it slopes down. We have three series of seals. I have the custody of the seals. There are a large number of them, but they are all made from one original bed-piece."

Q. "Do you know about the seal, or seals, from which the impression on these 'K' notes are made, and how many there are of them?"

A. "There are forty or fifty, I presume. They are all made from one identical bed-piece; they were made under my supervision; they

88 are all alike, in every detail; they have got to be identical, because they are made by the transfer-process from one bed-piece.

"There is a difference in the border of the coupon; it is more imperfect in the counterfeit than in the genuine. I observed that the loop in the letter 'P,' in the word 'Spinner,' where it drops over the lower part of the border, in the genuine, it shuts off a part of the star lathe-work border; in the counterfeit, the loop encloses that part of the ornamentation. I have examined the K notes, and I don't think that any of the numbers of the notes have been altered or changed by defacement, or otherwise."

On the cross-examination, the witness testified that he first went into the Treasury Department eight years ago. "My business is that of a picture-engraver, and I always did business for myself. My work was principally magazine-work, portraits, landscapes, or anything that came in the course of my business occupation. When I went into the Treasury Department there was no superintendent at the Printing-Bureau. The first superintendent was Charles Niell; S. M. Clark was chief of

the bureau of the second or first division of the Bureau of National Currency."

"I was appointed to my present position three years ago last June, and since these counterfeits were detected. My title is 'Superintendent of Engraving and Transferring.' When the second series of seven-thirty notes was got up, Mr. Duthie was chief of the engraving division, and Mr. Hobart was chief of the transfer division, Mr. Niel was at the head of the plate-printing division, and Mr. Bennett at the head of the numbering division. I had custody of the rolls, dies, bed-pieces; and it was my duty to give them to the transferrers or engravers, to see that the work was properly done. There were three series of
89 seven-thirty notes, and the engraving on all was exactly alike, with the exception that the first series had three check-letters instead of two. The first series were under the act of June 30th, 1864. The first of these seven-thirty notes were got up somewhere in the month of September, 1864.

"It takes three plates to make a seven-thirty note—that is, a tint-plate, a back-plate, and a face-plate; there was a green tint on the back, a green tint on the front, and the black part of the front.

"The plates used in printing notes were kept by me, and were sent from me on requisitions, which were entered on my books. I took a receipt when I delivered the plate. The requisition was made by the superintendent of the printing division. I had no supervision of the printing of the seven-thirty notes.

"The first plate, of four subjects each, of these seven-thirty notes, second series, was got up in the month of September, 1864. The transfer-work on this plate was done by many persons; I cannot give you their names. We had some twelve or thirteen transferrers at that time; I cannot recollect the name of any one who worked on these plates. I think the three plates of four subjects each were all finished about September, 1864. The sealing of the notes is a different process from the printing; the seals are printed on relief, like type—that is, typographically; they are printed in a different room from that where the rest of the work is done. I had the custody of all of the seals which I could get hold of. I kept them in the safe or in a vault attached to the safe. There were three or four seals came in to me, three years ago, which I had never seen or had control of. I gave out the seals, when required, on requisition from the superintendent of sealing. When he brought them back I made an entry in my books. There may have been forty or fifty of these little seals. I don't remember how many there were. I think there were some forty or fifty of these small red seals. There were
90 three classes of these seals; and there may have been three hundred of all classes. These three classes of seals are reduced copies of the Treasury seal. When I gave out these seals I delivered them on requisitions. I delivered as many as they chose to call for. What was done with the seals afterwards I know nothing about. These seals are made from different dies. I will state here that I might have had two or three of these dies, but kept on until I got what I wanted perfect. The dies were originally engraved by the American Bank Note Co. I don't know how many of each size of seals there were taken from the die. I think there were two or three hundred altogether, and probably fifty or one hundred of each of these three classes. All the plates for the genuine notes, both face and back, except the little panels which I made, were made by the transferring-process; the borders of the genuine notes and the counterfeits were made by geometrical-lathe work; all the back is geometrical-lathe work, with the exception of the letter-

ing and numerals; the cycloid is done by the geometrical-lathe; the rest of the work, aside from the seal and numbering, was done with the graver, that is, by hand, with the exception of the ruling upon the title 'United States' and the denomination title 'one thousand dollars,' which was done by a ruling-machine.

"It was always the practice in the Treasury Department to re-enter plates. When a plate becomes worn, and the impression does not come up perfect in all its details, it is usual to send it back to the custodian, and he has it re-entered from the original rolls, which is done by taking the rolls to the transfer-press and re-entering with it the same lines on the plate, and then putting it under a pressure, which sharpens the lines of the plate up again. These plates are made from perhaps a dozen different dies, and the rolls are sectional. Each roll is re-entered
91 separately. When we get a finished roll from the bed-piece, we can duplicate that counter a million times, if necessary. In ordinary cases a plate requires re-entering after from ten thousand to twenty-five thousand impressions; a careful printer will make it last longer than one who is not careful. I have never worked in the process of re-entering myself, but I understand the process. The business of engraving is as distinct from transferring as that of a printer is from that of an engraver. When we put the roll on the plate and apply the pressure, when the transfer is heavy, it sometimes sinks the metal under the roll, in which case it would be necessary to hammer the plate up on the back. Putting on the roll has a tendency to sink the metal under it. Sometimes, after being sunk, the face of the plate is raised by scraping away the differences and polishing it up again. Sometimes, in re-entering, the plate is what we call 'mashed,' or 'blurred;' in such cases they burnish it up. By burnishing, I mean rubbing out the impression at that point—smoothing it down. They burnish out only the part which is defective.

"Sometimes, in re-entering, the lines become double. I do not see any signs of double lines in the vignette on K 1. I think we had more than one roll of the vignette of 'Justice;' I think it is probable we had. I should hardly think there were as many as ten, but it is possible there were. There may have been one, two, or three rolls of the black counter; there may have been two rolls of the green counters, or only one; there may have been one or two rolls of the black counter. The lathe-work on the upper black counter was used on the compound-interest notes; excluding the figures '1000' in the green counter, the rest is lathe-work. These figures are put in by hand on the die; then it is hardened, and the roll taken right from it; the roll is soft when it is laid on the bed-piece, and the bed-piece is hard. The roll is relief; and, in order to use it, it must be hardened. Before it is used, it is required to be
92 heated. We had three face-plates and four back-plates to print these notes; the back of each note was printed at one time. In 1864 I kept these notes in a vault attached to my safe in the Treasury Department. When I gave them to the printer they went to a different part of the building. My room was the basement story, and the printing department was the top story. After the plates left me, I had nothing to do with them until they were returned after the printing; they were kept away sometimes a month or two, or even three months, as the case might be, as long as circumstances might require, until they had printed their edition off."

In answer to a question by a juror, the witness stated that he had seen a plate in the Government office from which the counterfeit notes could have been printed. "The plates of four subjects each, from which

I say the second series of seven-thirty notes were printed, were destroyed by direction of the Secretary of the Treasury; every one of the plates used for seven-thirty notes has been destroyed; they were destroyed about two years ago. Since the commencement of this suit, all the plates of the first series of seven-thirty notes were likewise destroyed."

On his re-examination by plaintiff's counsel, witness was asked whether he ever saw any seal that would produce the impression on C 1. Witness answered that he had seen a seal that would produce it. "The plates to which I referred in my answer to the juror as plates from which this spurious note could have been printed, I saw some time in the forepart of the year 1865. They were brought to the office by Colonel Wood and delivered by him to me. Colonel Wood was chief of the secret-service division at Washington. I am mistaken about the date; it was after the discovery of these alleged counterfeits. So far as I know,
these plates were never got up in the Department. The seal to
93 which I referred I saw about a year after the plates were brought.
It was also brought by Colonel Wood. I don't know whether Colonel Wood handed it to me or Mr. Clark. I had never seen that seal before."

On his recross-examination, the witness stated that the seal used in printing genuine seven-thirties has been destroyed. "The plates to which I referred as having been brought to me by Colonel Wood are lying on the table before plaintiffs' counsel. I have always retained the custody of them."

On further examination by plaintiffs' counsel, the witness stated that the loop in the "P" in the word "Spinner," in Exhibit K 10, encloses the star in the border in K 9; the loop intersects the star in K 17; the star comes inside. This difference is caused by the fact that every plate that is laid down will come in a different place. It is laid down by measurement, and it is impossible for it to come in the same place. In C 1 and K 1 the position of the star, with reference to the loop of the "P," is different. In K 10 and C 10 there is a difference in the loop. K 1, K 9, K 15, and K 18, are all B B, and are the only four of the K notes which have the check-letter B B in them; the loop in "Spinner" cuts into the ornamental figure in the line, by cutting the rays in two. K 2, K 5, K 6, K 8, K 10, K 16, and K 17 have the check-letter A B, and in these the ornament is in about the centre of the loop. In the notes C 1 to C 18 there is no difference in the position of the loops, but they are all alike in that respect.

On further recross-examination the witness said: "The word 'Spinner'
is put on by a transfer-press from a roll, on which roll the word
94 'Spinner' is laid out by hand. It is engraved first on the bed-
piece by hand. No two of these notes from different plates would be alike, because the transferrer lays out the word with a pair of dividers; he marks where he will put the vignette, and where the titles and denomination; then he puts the borders in, and then the 'Register' and 'Treasurer;' he leaves that till the very last thing; and he cannot get that identically in the same place. No man can lay out the same thing with mathematical accuracy in the same exact position at two different times. The engraver puts the word 'Spinner' on the bed-piece; from that it is transferred to the roll, and he puts that roll on each one of the four plates in a particular place; he has the plates measured, using a glass probably; and then the 'F. E. Spinner' is rolled into the plate. The geometrical-lathe work, in the counters, is, in the

first instance, what we call a shell, and is not much thicker than a piece of ordinary tin. That shell is put on the transfer-press, (it has no denomination on it;) then with a pressure brought upon it with an ordinary roll, any work that is on the shell is impressed on the steel counterpart; this is hardened and transferred to a bed-piece, and after the bed-piece is hardened the impression is taken up from that, in relief, upon a soft roll cylinder; that roll is what we call a white-letter roll. The man who is going to engrave '1000' on that marks the numerals upon the roll, makes the tracing, and transfers it to the roll over the lathe-work which is on it; then he takes the graver and cuts out all the lathe-work where the figures come, leaving the light just the shape of the figures. We call that a skeleton white-letter roll. After that white part is taken out of the roll the roll is then hardened; from that white-letter roll an impression is made on another bed-piece, the figures on which are finished up by the engraver—that is, hardened; and then the second, or finished roll, is taken up and rolled into the plate; and with that one roll you can make a thousand plates."

95 On examining the K notes and C notes the witness says: "The note K, with the letter A, and the note C, with the letter B, have the loop of the P in 'Spinner' in the same relative position to the rays of the star."

DAVID M. COOPER, witness for the plaintiffs, being sworn, testifies that he is an engraver, in the employ of the Treasury Department of the Government, and has been there since February two years ago; has been in the bank-note engraving business about fifteen years. "No part of the work in these notes is done by me. I engraved the original die for the seal; the seal is taken from the original engraving that I made. There is a difference in the form of the letters of the seals on the two classes of notes. I notice differences; it is somewhat difficult to describe them, though they may be seen; the forms of some of the dots on the shield are different—those dots representing gold. There is an imperfection on the genuine seal, at the lower right-hand part of the seal opposite the letter 'i' in 'sigil,' where the impression does not come up perfectly on the genuine, through some accidental injury perhaps, which does not appear on the counterfeit. The spurs on the counterfeit seal are more elongated, which gives it the appearance of being larger. I engraved the original die from which these seals were produced by the transfer process."

Q. "Could that die which you engraved have produced that seal on the counterfeit?"

(Objected to. Overruled. Defendants' counsel excepted.)

A. "It could not."

96 "The border on the genuine note is geometrical-lathe work, and that on the other notes appears to be produced by hand. The black counters on the genuine are made by a geometrical lathe, and on the other they were made by hand. Geometrical-lathe work is done by a point making a continuous line, and then another series of lines crossing each other, and then perhaps a third series of lines crossing those where the lighter part of the lathe-work is produced, so that these lines can be traced continuously. On the counterfeit, the lines are not continuous; you will find black spots intervening, cutting off a line, and producing the same general effect of light and shade; so that, to the ordinary eye, they appear the same, but upon examination with a glass these differences can be perceived.

"The geometrical lathe could not produce such work as we find on

the counterfeit; the forms of the letters in the panel, 'interest twenty cents per day,' are different—the spurs of the letters 'E' and 'T' being generally more pointed in the counterfeit. It is difficult to describe the differences; they are readily seen by an engraver. In the title, 'United States,' the ruled shading, which is done with a ruling-machine and bitten in with acid, is different, there being six lines in the counterfeit over the letter 'S' and but three in the genuine.

"In the words 'one thousand dollars,' the white between the black part of the letter 'O' and the shade is broader on the genuine. It is somewhat difficult to describe the particular differences, but they are readily seen with a glass, or with the naked eye, if you have a good eyesight. In the vignette, the arm resting over the shield, in the counterfeit, covers the letters on the top of the shield more than it does on the genuine, so as to hide the top of the 'P' more than the genuine. The spurs on the claw of the eagle are not the same; there are hardly
97 any indications of a claw in the counterfeit. It is difficult to describe, in words, the particular difference. The shadow under the thumb of the hand holding the scales, is different. In the green counter the most striking difference is at the ball of figure '1,' in the relative position with the figures on the lathe-work; at the top of the figure '1,' on the genuine, the figure comes in contact with the trefoil ornament, while it is not so on the other; then, at the bottom, the figure '1' on the left projects into the dark part, while in the counterfeit it does not. The relative position of the different parts of the lathe-work would be the same on all, because it is all transferred at one time. The green counter on the counterfeit has the appearance of not being lathe-work, but of being cut up into small sections. On the back of the note, the cycloid-work on the panels is different. The work on the counterfeit must have been done by hand; could not be done with a lathe. The borders on the coupons of the notes are somewhat different; on the genuine it is geometrical-lathe work; on the other it is hand-work."

By the COURT. "In your experience as an engraver, looking here at what you call the genuine and the counterfeit notes, are the differences which you see and have pointed out between the two such as you have ever known to result in the printing of notes from one and the same plate—those differences being produced by re-entering, or difference in the process or skill of transferring?"

A. "No, sir."

On cross-examination, the witness stated: "I never did any geometrical-lathe work myself. I never printed a bank-note. To make the green counter, the lathe-work was taken up from the original bed-piece on a roll, and from that roll they cut off the parts of lathe-work
98 in relief, leaving a blank '1000' there; there is a blank space cut off in the lathe-work on the roll, leaving a blank for the '1000.' these figures '1000' are marked out on the roll and the lathe-work cut off, leaving a blank space on the roll. That roll is hardened and laid down on a die; the impression then on the die is this lathe-work, with a blank space where these figures are to be cut in. Then the die is finished up, black shading cut on, and lines put around, &c., and a roll taken up from that die which is used on the plates. The relative position of the figures to the lathe-work would be the same on all rolls, if the rolls were taken from the same die. If you used different rolls, or took up rolls from different dies, they would not be the same. Geometrical-lathe work wears out by use as well as other work. If geometrical-lathe work should wear out, it is restored by re-entering, in the same

manner as other work, by re-entering the original roll with the figures and lathe-work all complete.

"Re-entering is a nice process, requiring experience. I engraved three dies for the three different sized seals; from that one die of each size there could be produced an unlimited number of seals. The geometrical-lathe work of the green counters is made in sections. Each of those counters is composed of twenty-four sections, each section in the shape of a triangle, cut from a circular piece of paper; one of these sections of the lathe-work is transferred to a roll, and this section is transferred from the die twenty-four times to make the bed-piece for this counter. The relative position of the roll to the plate and bed-piece is shifted, so as to have the work come in contact with each section until a complete counter is made; where the sections join it is touched up by the graver. The black counters are made in the same way—from five sections. I have no knowledge in regard to the number of rolls or plates for these notes."

99 In regard to the seal the witness says: "By the eye there does not seem to be any material difference in the size of the centre of the seal; the apparent difference results from the length of the points. The seals are impressed on the notes typographically; that is, the seal from which the impression is made must be raised. The seal is made by a transfer from the roll, and the spaces between the points are picked out with the graver, either by hand or by mechanical process. I will state that I do not place any great importance on the length of the points in the seal. The upper panel on the back of the genuine note is made up by sections of lathe-work, as above described. The shell-work is also made in sections, each one being complete in itself. The interior of the panel is cycloid work, put on by a geometrical lathe after the other part is transferred; all put on at one time, but by a different process from lathe-work. The border-shell-work in the corresponding panel of the notes marked 'C' is made in the same way, and the ornaments are put on in the same way, and the cycloid work is either done by the same process or else it has been cut by hand; I cannot say, positively, which."

On redirect examination the witness testified: "I have seen printing done from plates. An engraver, of necessity, must know whether an impression is good or not, and is always consulted in regard to the proofs when they come from the print."

By the COURT: "Did you ever know of a note like those marked 'C' to be printed from the plate from which the notes marked 'K' were taken?"

DEFENDANTS' COUNSEL: "I desire an exception to that question, because there is no evidence in the case that the witness knows anything in regard to the printing of notes."

100 The WITNESS. "An engraver, of necessity, has to know in reference to the printing."

Q. "Did you ever see printing done from plates?"

A. "Yes, sir."

Q. "How extended has been your observation?"

A. "Not a great deal; I have done it. I have printed. An engraver, of necessity, must know whether an impression is good or not."

Q. "You have seen printing done from plates?"

A. "Yes, sir."

Q. "You have seen the result of printing from plates, and know what it was?"

A. "Yes, sir; the engraver is always consulted in regard to the proofs when they come from the press."

The COURT: "I think it is sufficient to allow the witness to state whether he ever knew of the production of notes like those marked 'C' from a plate on which the notes marked 'K' were printed."

DEFENDANTS' COUNSEL: "I desire an exception."

Exception noted.

The witness answers: "I never did know of such a thing."

CHARLES BURT, witness for the plaintiffs, testified that he was a bank-note engraver, and had been engaged at the business as an engraver for thirty-four years, and was a bank-note engraver for about eighteen; his business is principally confined to vignettes and portraits.

"The vignette on the genuine notes marked 'K' was engraved by myself for the American Bank-Note Company, and was afterwards sold to the Government. I don't know the date when it was sold. I
101 have compared it with the vignette on the notes marked 'C,' and find its general character on the 'C' notes not so pure as my own; there are lines substituted which are not in the original. It is evident that they have tried to run the same lines, but where they lost it they have filled it up. It is not my labor. I will point out a difference to you. In the fold of the scarf which hangs immediately under the arm which holds the scales, there is a delicate fold in the lighter portion which is not in the other. There is another portion right on the knee, with black drapery, where the light strikes upon it; my lines are intended to give a play of light upon that portion of the knee, but in the other the lines are perfectly pure, mine are a little wavy. There are some lines in the clouding here introduced into the counterfeit which are not in my device at all. I can only show them to you. I can hardly point them out. If you take a glass and look at them, you will see them, immediately beneath the eagle, in the clouds beneath the shield. Then there are folds in the arm which holds the scales, which are not in the counterfeit at all. It is apparent to any one who looks at them that there are five or six in the small space. Unless you look at it closely you cannot readily observe it. The fleshy part, representing the hand holding the sword, has been evidently cut and what is termed 'stubbed.' In my original I stubbed it with a dull point. In the counterfeit it has been cut.

"The expression of the face is somewhat lost; there is a close resemblance, but still it is not the same; the face is sweeter in the original than in the other. You can see that the result of the graver-work in the vignette has altered the light in many places. It is difficult to point out in these small instances, there are so many lines together in the design. There is the same difficulty in looking at that little cap, covering a space of not more than a sixteenth of an inch. There are
102 a great many lines. I can hardly call attention to any special line; but the general feeling is lost. The arm that is on the top of the shield is so crowded down that the letters on the shield are in a measure lost. The lines I have taken to form the wings of the eagle are separate in themselves, but in the other the lines cross. The claws of the eagle are in a measure lost in the counterfeit. There is an indication of two claws in the counterfeit, but they are not in the same position as in the original."

The witness further states: "I am familiar with the results of printing the vignette described, and have been for a long time. I never knew

any such differences to be produced by the process of printing from the same vignette, as are apparent in this vignette."

On cross-examination, the witness testified that he never did any of the printing himself, nor did he ever do any of the lathe-work. He has never seen the die of the vignette since he gave it to the American Bank-Note Company; the vignette was used on the fifty-cent fractional currency stamps. "I left the American Bank-Note Company about a year ago, and have been engraving for the Government ever since. The comparison to which I have referred, I made about three weeks ago, when Mr. Casilear came here from Washington. I had examined the notes before, though hastily, with Mr. Clark, when the differences were first discovered, in 1867. At that time I was applied to, to make an affidavit for the Government that these notes were counterfeit, and I did decline to do so. The reason why I declined to make an affidavit for Mr. Clark that the notes were counterfeit, was because I thought the note was produced from an electrotype."

On recross-examination, the witness says: "If it was an electrotype, it must have been a perfect fac simile of the original."

98 PHILEMON DICKINSON, witness for the plaintiffs, being sworn, testifies that he is foreman of the transfer department of the American Bank-Note Company, and has been engaged in that business thirty-two years. "Used to take up rolls and make plates, and since the last ten years have worked at geometrical-lathe work off and on. I cut the original black counter on the 'K' note for the American Bank-Note Company. I see a difference in that counter between the 'K' notes and the 'C' notes. In the upper circle, where each section of the lathe-work joins in the crossings of the lines, there is a difference in the last '0' in the figures '1000.' There is a difference in the shape of the black section over the '0;' it is a black dot, left with the lathe-work, and printed black. In the original it is shaped like an egg, with the end cut off (the small end;) in the counterfeit it is nearer oblong, more like an oblong square. On the genuine the work is geometrical-lathe work; on the other it is done by hand. The border of the genuine is sectional lathe-work; I should say that the work on the other was done by hand. The green counters are the same on the front and back of the genuine notes. The work is very poor work, although I cut it myself; it is lathe-work. The green counter on the counterfeit, I think is done by hand. I have noticed, during my experience, the results of my own work. I have never known geometrical-lathe work, such as this shell-border, to produce such work as the corresponding border on the counterfeit."

On cross-examination, he says: "I never saw the die which I cut for the black counter since I handed it to my employers. There is nothing in the counter which enables me to tell that the counter on that note 'K' is made from the die which I made for the American Bank-Note Company. The goodness of the work depends upon the nicety with which the sections are transferred in making the plate.

104 "After a transfer has been made, it is sometimes necessary for the workman to use his graver and pick up the work and remedy any defects which may exist in the transfer; whether it is necessary or not, depends upon the skill of the workman who makes the transfer. It is a very nice process, requiring great skill, experience, and practice in the use of the transfer-press. The green and black counters on the 'C' notes were transferred from a roll; the border on the face of the 'C' notes was also transferred from a roll; all the lathe-work in the panel on the back of the 'C' notes was likewise transferred from a roll,

with the exception of the cycloid-work; the coupon, I think, was also transferred from a roll; and the border lettering and everything, except the number on the 'C' notes, was likewise transferred from a roll."

Being asked to point out which of the differences he regards as the most serious and important, the witness states that one of "the greatest differences" is the relation of the figure "1" to the heart and on the bottom also, and the ruling on the top of the "S" in "United States."

On redirect examination, the witness testified: "I see differences between the two vignettes, in the position of the arm on the shield and in the claws of the eagle."

JAMES P. MAJOR, witness for plaintiffs, being sworn, testified: "I am engaged with the American Bank-Note Company as a modeler and designer. I am also an engraver; have been so for some thirty-five years. Have devoted myself particularly to the lettering; never worked at transferring or geometrical-lathe work. I have looked at these notes, 'K' and 'C,' for a few moments. The prominent differences in the lettering, in the ruling of the title 'United States,' in the top por-
105 tion of the 'S,' in one I find three lines, and in the other six. The shading in the genuine consists of one line, and the other consists of three. I find a variation in the number of lines in the shading of the 'one thousand dollars;' in the genuine I find seventeen lines, in the other fourteen. I find a difference in the black counter; in the original you can trace the white line to the centre of the counter, and on the other it becomes vague after leaving the edge of the work. There is a difference in the relative position of the figure '1,' in the green counter, to the heart. I notice a difference in the vignette; on the original the loop of the letter 'P' is apparent, while in the other there is none at all. I find a difference in the folds of the drapery just below the point of the two knees. I have been familiar with printing from engravings. I have never known such discrepancies and diversities as I have spoken of to be produced in printing from the same plates."

On being cross-examined, the witness says: "All I do in the way of engraving is the lettering. My modeling does not require any engraving; it is merely an adjustment of different combinations. I have never done anything in the way of printing or transferring or lathe-work. The differences to which my attention has been called are not discernible to my eye without the assistance of a glass; they require a glass and close examination to detect them."

JAMES BANNISTER, witness for plaintiffs, being sworn, testified: "I am an engraver of pictures, portraits, landscapes, and historical subjects for about thirty-five years; am in the employment of the American Bank-Note Company. Have engraved vignettes on bank-notes." Being shown notes C 1 and K 1 he says: "On the part of the hand where the little finger is, the lines in the genuine note terminate abruptly, and in the other they turn round. There is a difference in the clouding at the lower part of the shield and in the light
106 drapery round the foot, and the dark drapery immediately above the light drapery. The dots which are used in order to lead the vignette off into the paper are different in their character. In the counterfeit there is scarcely any loop to the 'P.' There is a difference in the drapery on the sleeve; but it is difficult to characterize it or to make it intelligible. There is a difference in the general expression of the face; it is very well copied. There are slight differences; I find some lines in the spurious that are not in the genuine. In the clouding,

under the shield, in the genuine, there are seven lines, and in the counterfeit there are nine; that is the only instance I can be positive where there are more lines in the counterfeit than there are in the genuine. I never knew an instance in which a plate, such as that on which the genuine figure was produced, would produce the discrepancies and differences I have spoken of."

On his recross-examination, he says: "In my answer to the last question I have assumed that two impressions were produced from the same identical plate, in the same condition and without any alterations. I have nothing to do with printing, or with transferring, or with lathework, nor with making rolls, nor with making transfers, nor with reentering plates. I have nothing to do with printing from plates which have from time to time been altered by re-entering. I am not sure that I could always recognize my own work. In the large quantity of work I have done it is almost impossible, but in work which I did recognize as my own I think I should be able to discover discrepancies or differences between that and another piece of work of a similar kind with greater facility than a stranger could. I think that a man who did the work originally would be able to detect differences more accurately than a stranger. The differences to which my attention has been called on these notes are not discernible without a glass. They require close inspection to discover them.

107 JAMES GRAY, witness for the plaintiffs, being sworn, says:

"I am in the employ of the Government, and have been since August, 1863. I was superintendent of sealing the seven-thirties and other securities. I made the forms for printing the seals, and it was done under my direction. The seal used in sealing the seven thirties was the small seal, the same as used on the national bank notes. There are two marks on the seal used on the genuine notes, which were on the original die when I first came to Washington, by which I can always see whether it is the right seal; it is an abrasion, occasioned by some injury the seal received, which leaves a little white spot on the body of the ray."

Looking at the notes marked C, the witness states: "I find no such mark on any of the seals on these notes. There never was, to my knowledge, any such seal as that used by the Government in issuing seven-thirties. There is some difference in the lettering on the seal. The points of the rays round the seal are longer, and are better cut and clearer, in the counterfeit than in the other. I think, taking the whole seal, the counterfeit is no larger than the genuine—I think about the same size. It has a larger appearance, because the rays are longer." On measuring, witness states: "I find the counterfeit seal is larger in the body and in the rays. There is a difference of a thirty-second part of an inch in the distance from the tip of one ray to the tip of the other, on each seal. I first saw these notes in the early part of October, 1867."

On his cross-examination the witness testified that Mr. S. M. Clark was the head of the sealing department. "I had nothing to do with the seven-thirties except to seal them and stamp the figures '1' to '5' on the coupons, which was done at the same time with the sealing and with the same machine. We were sealing legal-tenders at the same
108 time that we were sealing seven-thirties and national currency. It was all done in the same room, and there were occasions when the sealing-presses for these different classes of securities were all in operation at the same time.

"We had one hundred and sixty-three seals for sealing these different notes, of three sizes, of which that used on the seven-thirties was the smallest. When these seals are not in use, they were kept in an open rack in my room. There were times when they were not in use in my department. As a general rule, they were always in operation, though there were always some of them that were not in use. When they were not in use in my department, they were returned to Mr. Casilear; but when they were needed in my department, they were not locked up."

(Plaintiffs' counsel objects to this evidence as irrelevant. Defendants' counsel proposes to show that the seals used for Government obligations were kept loosely in the office, and were used indiscriminately on different classes of obligations.)

The COURT. "If you wish to show that they used some seal other than what is called the small-sized seal on seven-thirties, that is competent; but your question does not tend to prove anything of that kind."

Defendants' counsel excepted.

"I never saw the die from which these small seals were made. I think the die was cut some time in 1864, but I never saw the original. There were fifty small seals made from that die, made at different times. There were about twenty-four of these small seals made at first, and the rest of them were made at different times subsequently. I got the seals on a requisition from Mr. Casilear. All which I had to do
109 was to impress a certain seal on a certain kind of securities, under the direction of Mr. Clark. I impressed a seal on everything for which I received a requisition from him. I had nothing to do with the notes after I had sealed them. These sealing-machines were attended by young ladies, one at each press, which was worked by steam-machinery. No record was kept by the parties running the presses of what they sealed. We had a large table where the notes were counted, and when the person at the press finished a bundle, it was handed back, and she would take another. It is impossible for me to handle all the paper in so large a concern. These seals would, of course, wear and become depreciated by use."

"When I first saw these seals, in 1867, I discovered that the seals were larger on the counterfeits than the others. I said here, to-day, that I did not think the counterfeit seal was larger, looking at it with the eye. I did not measure it; before I measured it I said I thought it was not larger than the other. I have never examined the seals particularly from the time the notes were first shown to me by Mr. Clark in 1867. The diameter of the outer rim, as near as I can measure the seal, is the same in both, the difference being entirely in the length of the points. I never have examined the seal on any of the genuine seven-thirties, except the eighteen 'K' notes shown me here to-day. The notes were numbered before they were sealed; the sealing completes the notes."

On redirect examination, the witness says: "The seal and the numbers on the coupons were put on at the same time, with the same machine. We had the five figures electrotyped, and they stood just one above the other. The relative position of the '5' to the seal, on the genuine note, is the same on all those notes, and the relative position of the same figure '5' and the seal is the same on all the spurious
110 notes. There is about one quarter of an inch more space between the seal and the '5' on the genuine than there is between the seal and the '5' on the counterfeit. In the process of printing, the seals and numbers are locked up in a form—in an iron chase, as we tech-

nically call it; the figures are electrotyped and the seal is steel, and they cannot move, being securely locked up."

On recross-examination, witness states:

"I arranged the form. It never was broken up until we were through with the whole issue. I had no occasion to shift the seal or the numbers; kept the same seal in all the time. The form was made up in the same manner as types are made up; all that it was necessary to do to unfasten it was to unlock it by changing the side-sticks and pieces of wood. Any one familiar with the process could unlock it; any printer could do it. I think we were a whole year printing the second series.'

WILLIAM A. MELOY, witness for plaintiffs, being recalled:

Q. "Look at the eighteen notes marked 'K,' and state whether these are the genuine notes of those numbers, respectively, issued by the Government?"

(Objected to by the counsel for the defendants, on the ground that the witness is not shown to have any knowledge of the issuing of the notes.)

The COURT. "You ought first to lay the foundation for the question."

Q. "Do you know whether these notes were or were not issued by the Government?"

A. "I do."

"State whether they were or not so issued."

(Like objection.)

111 The witness states: "I had more or less to do with the issue of nearly all these series. I was corresponding clerk, and it was my duty to assist in all the other parts of the operations of the office. I counted a great many of these seven-thirties; wrote the letters which accompanied them in their transmission from the Department to the various parties who had subscribed for them; wrote the receipts which were sent out with the notes, to be returned by the parties when they should have been delivered. I also sealed, as we termed it, the schedules or sheets by which notes of different numbers were allotted to different subscribers, including the defendants, and in some cases folded the notes with the letters, and addressed them to the parties who had subscribed. The notes which were sent were received either from Mr. Andrews, Mr. Marsh, or Mr. Irwin. I recollect nothing more.

"My connection with the eighteen 'K' notes is, I find, that I wrote the letters and the receipts which were enclosed with the notes when they were sent out of the Department; not all of them, because there are some of them which are not in my handwriting. All the notes of the eighteen which are included in the six receipts which I hold in my hand, marked 'L 1' to 'L 6,' and which receipts are in my handwriting, I believe, were issued by the Department to the parties mentioned. I sent out nothing higher than '68,000.' The notes 'K 7,' '18,' '10,' '16,' '13,' '12,' '17,' are covered by these receipts. Subscribers, including the defendants, sent to the office a sheet, as their order, to issue so many notes, specifying the denominations and the names of the persons to whom to be issued. The notes were allotted and the numbers written, both inclusive, in the scaling over the figures in the sheet.

"There is nothing in the scales that enables me to state that any of these notes were sent to Jay Cooke & Co. or any other person.

112 All that I am able to speak of is contained in the receipts and letters which I wrote myself, and which cover seven of these notes.

The receipts are prepared in the Department and sent with the notes, and returned signed by the person to whom the notes were sent."

The court marked the receipts which the witness identified as having been in his own handwriting.

"I filled up the letters that I wrote from the scale-sheets, showing that certain notes had been allotted for issue to certain parties. There is only one of these sheets in which I see any handwriting of mine. When the letters were filled up, the receipt was written and an envelope prepared in which to enclose them, and the notes mentioned in the scale-sheet put together on a table in the order in which they were to be issued; then they were counted off by different people. Sometimes twenty were engaged in counting and putting the notes into different envelopes. There is no means by which I can identify any particular notes as the notes, excepting the correspondence of number. I examined the alleged counterfeit notes in October, 1867, which was the first time I saw them."

JOHN IRWIN, being recalled by the plaintiffs, testifies: "I sealed the sheet in which were included the notes between the Nos. 179699 and 180123, and put those notes into an envelope. Those notes were allotted to Jay Cooke & Co., Philadelphia. This covers 'K 5, 180105' and 'K 3, 180107.' This is the receipt covering those notes. The receipt was unsigned when it was sent out, and it was returned signed. The receipt is not in my handwriting, but it is in the handwriting of Mr. Mahr."

113 Another scale is shown to the witness, which, he says, includes all the notes between "158794" to "162184." "These were allotted to Jay Cooke & Co., at Washington. I sent out these notes with the receipt; the receipt is filled up by me. It was returned subscribed by Jay Cooke & Co. This receipt covers 'K 15, 160182,' 'K 9, 160130,' 'K 4, 160236,' 'K 14, 160452,' 'K 7, 160484,' (marked 'L 8.') The receipts for the remaining notes are not in my handwriting, nor do I see any of my handwriting or figures on the scales. There is nothing about the receipt that I can identify; it appears to be one of the receipts of which we have a great many of the same character. I am not positive as to the handwriting on the scale; the signatures on the scales are the initials of the clerks who attended to the business. The sheet I now produce covers the notes of '140000.' I cannot identify the handwriting. I believe it to be one of the sheets out of the regular books in the office."

Plaintiffs' counsel offered in evidence the two receipts marked "L 8" and "L 9;" to which counsel for defendants objected as incompetent. Objection overruled, and defendants' counsel excepted.

Receipt marked "L 9" covers "K 8, 140209," and "K 11, 140121."

Counsel for plaintiffs also offered the scale-sheet last mentioned and the receipt thereon endorsed, marked "E. C. Brooks, assistant cashier."

Plaintiffs introduced scale-sheet marked "M 7," which corresponds with receipt marked "L 7," and scale-sheet marked "M 8," corresponding with receipt marked "L 8;" the former covers the notes numbered in the "180000," and the latter covers the notes numbered in the "160000."

114 Plaintiffs' counsel offers in evidence scale-sheet marked "M 9," corresponding with "L 9."

"The receipt now shown is in the handwriting of a man named 'West,' who is in the employ of the Department. It came from the files of the Treasury." (Marked "L 10.")

"I know the twenty-nine notes, '180157' to '180185,' were sealed by me, and that those notes were issued to David Hays, part of them be-

ing filled in by myself. The entire number of seven-thirty notes— second series, denomination '$1,000'—was 180272. No duplicate numbers were ever issued, to my knowledge. The notes were numbered in consecutive order, from No. 1 to the end of the issue. There are four numerical registers covering this issue of notes.

"This register is a ledger, in which a line is devoted to every number of an issue of notes, the numbers being entered consecutively. When a note corresponding in number is received, a check is made there, and on the opposite side of the line an entry is made of the number of the case in which it has been received. There were five coupons to each note, each coupon consecutively numbered, and also numbered to correspond with the note to which they were attached."

On cross-examination: "The Treasury-notes which I sent out were received by me from Mr. Marsh, the head of the room, accompanied by a statement of the amounts and numbers.

"I counted them, and they were receipted to the Department. Sometimes, but not always, I made up the packages for distribution to subscribers. There were five or six persons engaged in that branch of the business. There is nothing besides the correspondence of the number and the denomination which enables me to identify any notes as those
115 I sent out. It was not part of my business to make any comparison, except to see that the notes corresponded in amount to the blank receipt.

"The act of March, 1865, included the second series, the third series, and part of the first."

Redirect-examination: "On the numerical register there are two checks; one indicates the reception of the note, and the other when it was brought back on the second examination.

"I required all these notes to be brought back for the purpose of verifying the first check and insuring the correctness of the books. This was done by a clerk under my charge."

Witness examines the book, and states that he finds the following numbers of seven-thirty notes to be checked twice on said book:

68446,	68761,	160452,
68466,	140121,	160484,
68537,	140209,	180105,
68649,	160130,	180107,
68715,	160182,	180133,
68735,	160236,	180165.

"None of the checks in regard to these notes were made by me."

JOHN P. BIGELOW, being recalled by the plaintiffs: "I have searched for and found the coupons belonging to the eighteen 'K' notes. With those that are still attached to the notes, those that I now produce make all the coupons to the notes, and they correspond in number with the notes to which they belong. I have found them in the archives of the Department. They are punched with a round punch, shaving the cancellation of them. I have searched in the Department to see whether or not there are any duplicate coupons for the eighteen 'C' notes."

116 Q. "Have you been able to find on the files of the Department any duplicate numbers of these coupons corresponding with the 'C' notes?"

(Objected to by the defendants. Objection overruled. Exception taken.)

A. "No; these are all I could find with these numbers."

On cross-examination the witness stated: "The coupons were not within the scope of my duties in the Treasury Department. They are paid in different parts of the country by the different assistant treas-

urers, and returned to the Treasury of the United States, whence they go to the First Auditor, and then to the Comptroller, and then to the Register, at which last office the accounts are kept. I am not connected with the Register's office. The search for the coupons I made in the Register's office."

Plaintiffs' counsel offered in evidence the coupons produced by the witness.

DEFENDANTS' COUNSEL: "We object to them on the ground of irrelevancy. We hold that the genuineness of these notes is not to be determined by any arbitrary recognition by the Government of any other set of notes."

(Objection overruled. Defendants' counsel excepted.)

Witness further testified that the coupons matched with the 'K' notes, and that he spoke of their identity from the fact that they did match.

Plaintiffs' counsel also offered in evidence the eighteen notes marked 'K,' to which defendants' counsel objected as irrelevant.

(Objection overruled. Defendants' counsel excepted.)

Plaintiffs hereupon rested their case.

117 DEFENDANTS' TESTIMONY.

UZAL C. RYERSON, called as a witness by defendants, being sworn, testified that he was in the transfer department of the National Note Bureau, of which S. M. Clark was the head, for three years, from February, 1863, to 1866. "Mr. Hobart was head of the transferring department when I went there, and he was succeeded by Mr. Joseph Ourdan. My duties were to get up bed-pieces and transfer-plates and make new work. I am familiar with the process of transferring; have been engaged in that business for nearly twenty years. Have been in the employ of various bank-note engravers, including the American Bank-Note Company. The object of re-entering a plate is to restore it and renew its sharpness after having been worn down by constant use; it renews the part re-entered. One part of the plate may be re-entered without another. The re entering is made by means of the transfer-press—exactly the process of making the original plate. It is a difficult and nice operation. Sometimes in the process of re-entering, the work gets doubled, sometimes gets mashed; in some instances the defects are burnished out—that is, are erased by a burnisher—and in other cases the defective part is scraped out of the plate; sometimes the plate is hammered out, and we roll it anew.

"I am familiar with the mode of using plates. We have to scrape the plate and burnish round the transfer, and sometimes have to turn it over to the engraver to have it retouched. It is quite common in burnishing that a person scrapes off a part of the plate, and runs in the edge, and takes out a line or two. We frequently bur-
118 nished around the work on the roll. This is done by filing off with a file and scraping off with a burnisher. In this operation a portion of the work on the die may be cut off. The rolls sometimes wear out and work less distinct by use and repeated transfers. It is a very common thing. Where this is done a new roll is made. The re-entering of a plate has a tendency to settle the metal in the plate, and this tendency increases every time the re-entry is made. In such cases the plate is 'brought up,' as it is termed, by turning the face down on a polishing-anvil, and striking it all around the subject with a hammer on the back of the plate. In this process of transfer or re-entering, the

pressure is not the same on all parts of the plate. If you get too much pressure, your work will spread; if too little, it will not come up."

Q. "Where there is so much pressure, is there any danger of smashing the lines as you call them?"

A. "Yes, sir; very frequently."

Q. "You have said that where that roll had become worn out it could not be mended, so to speak; you would be required to make a new one?"

A. "That is the way we generally do."

Q. "From what is that new roll, if it is required, made?"

A. "It is made from——"

PLAINTIFFS' COUNSEL: "I object to this testimony. It is not competent to go into these general matters without proof that something of the kind has been done in the Department. We should not spend time in taking the opinions of witnesses as to what may be done."

The COURT: "I have been of that opinion for the last twenty minutes, but the Government made no objection."

119 DEFENDANTS' COUNSEL: "It is pretty difficult for parties placed in the position of the defendants to prove, by direct evidence, that these various things have occurred in the Department, in reference to the printing of these identical notes. We are obliged to meet a case made by the Government, and it seems to me we should be entitled to show, and the object of this testimony is designed to show, that the differences and discrepancies, whatever they may be, between these two classes of notes may be readily accounted for by defects, occasioned in this very process of re-entering and re-transferring."

The COURT: "There is no doubt about that; but you don't show any such thing. Mr. Cooper and Mr. Dickinson both agree, on being shown different notes, that according to their experience they had never known any imperfect transferring or re-entering from mechanical execution that would account for the difference and the lathe-work. Mr. Cooper and Mr. Dickinson said the same in reference to other matters. That is all that is proper. This speculation and asking the jury to infer that it may have happened in this case because it has happened in some other case, is not relevant, and is raising a false issue. I shall not admit the testimony if it is objected to."

DEFENDANTS' COUNSEL: "I propose to show by this witness, now, that where these rolls are injured in this way, a new roll is made up from bed-pieces, and that there is more than one—many bed-pieces for the same subject."

The COURT: "I am not going into that; it has nothing to do with the case."

DEFENDANTS' COUNSEL: "Your honor will give us an exception."

The exception was noted.

120 Witness was requested to examine the 'C' notes and the 'K' notes, particularly the vignette and green and black counters and the borders, and the black, and after having made such examination was asked this question:

Q. "Do you discover any discrepancies or differences between these two notes, which, in your experience, may not have been caused by a defect in the transfer?"

PLAINTIFFS' COUNSEL. "I object to the question. That is not what we were permitted to ask. Then I object to it as leading in form."

The COURT. "That question is very unsound. It will not do to show that that might be produced in that way. The witness can state what he knows from his experience.

DEFENDANTS' COUNSEL. Your honor will note our exception.

Exception was noted.

Witness further testified that, in his experience, differences as great as those he has discovered between the two classes of notes have been occasioned by defective, or the consequences of defective, re-entering. "I have seen even more difference from bad re-entering or bad retouching by the engraver. In my experience, as great differences have been occasioned by defective transferring, or the consequences of defective transferring. The plates are frequently touched up by hand by the engraver after a transfer.

"I was connected with the transfer department at the time these seven-thirty plates of the second series were got up. During the time I was in the department I frequently saw the plates, bed-plates, dies, and rolls which were used in printing the second series of seven-thirties."

121 Q. "I now ask you to look at the two notes, 'C' and 'K;' can you state, from your experience in the Department, and from the knowledge of the plates there used to print the second series of seven-thirty notes, whether or not these two classes of notes, 'C' and 'K,' were printed from the same plate in different conditions, occasioned by a re-entry?"

(Objected to.)

The COURT. "That is asking the witness for his conclusion. You may ask the witness the same question which I allowed to the Government, which was, whether, in the course of his experience, he has known such discrepancies, as he says are there, to be produced by printing from the same plate."

DEFENDANTS' COUNSEL. "He has answered that."

The COURT. "You have a right to ask him whether he has known such defects and discrepancies to exist when printing from the same plate."

Mr. BURRILL. "The difficulty in putting the question in that form is this: my question is exactly the question put by the court, with this modification: I say, from the plate in different conditions occasioned by a re-entering. The plate is the same plate, although a portion of one part."

The COURT. "I cannot admit that question until you show that the plate which was used was in fact put in a different condition by re-entering. I exclude the question for the present."

Exception noted.

122 Q. "Have you ever known differences, of the character of those stated to exist between the 'C' notes and the 'K' notes, to be caused by printing from the same plate in different conditions occasioned by re-entering?"

The witness examines the two notes "C 1" and "K 1," and states that the border round each of the notes is lathe-work, and that he can tell from looking at the two borders whether they are from the same piece of lathe-work or not. "The green counters on both notes are lathe-work. The top panel on the back of the two notes is what is called cycloid work, made by a cycloidal-ruling machine. It is lathe work, but not geometrical-lathe work. The shell-work around the panels is also lathe-work. The cycloid work on the upper panel of the two notes is made in the same way by the same kind of a machine.

"A skillful transferrer will be able to lay out a piece of work on two different plates in the same relative position to other parts on the plates. Mr. Duthrie, who was the head of the engraving department, is alive,

and so is Mr. Curdan and Mr. Clark. There were a dozen men employed in my particular department when I was there. I consider myself competent to speak of the skillfulness of the workmen employed in the transferring department while I was there."

Q. "In regard to the character of the operatives in that department while you were there, in regard to skill and experience in that particular branch of the business, what was it?"

(Objected to.)

DEFENDANTS' COUNSEL. "I desire to show that there were men employed in that department totally unfit for the positions they occupied, and that these defects, which are here attributed to the counterfeiter, con be traced to the unskillful manner in which the work was carried on."

123 The COURT: "If you can show by anybody who was there that imperfect transfers occurred and were actually used on the plates, I will admit the proof; but this sort of vague thing, that unskillful hands were employed, I cannot admit. Probably if bad transfers were made they would not have used them, but would have thrown them away."

"That is the presumption."

Defendants' counsel excepts to the ruling of the court.

DEFENDANTS' COUNSEL. "I propose to prove that the plates from which this second series of seven-thirty notes were printed by the Government, and the bed-plates, dies, and rolls which they used to transfer and re-enter these plates, were kept in such a loose way, without any proper precaution, that they were open to use by individuals in this department, with abundant opportunity afforded them to use the plates, seals, transfer-presses, paper, numbering-machines, and sealing-machines of the Government in the completion of a perfect instrument in all respects resembling the conceded genuine notes of these series."

The COURT. "So as to make the 'C' notes?"

DEFENDANTS' COUNSEL. "Or the 'K' notes."

Offer overruled by the court.

Defendants' counsel excepted.

On cross-examination, the witness testified that he is by trade a transferrer; that for eight or ten years before that he was a mason; that he commenced work as a transferrer about twenty years ago in transferring bank-note work; that in the Department he was engaged in trans-

124 ferring fractional-currency plates, and taking the geometrical-lathe cuttings and manufacturing them into counters, borders, tints, and a variety of things; is familiar with geometrical-lathe work, although he has never cut any originals himself. "The shell-work on the border of the panel, on the back of the genuine notes, is so bad that it is difficult to tell what produced it. Both notes are bad, but the 'K' notes are a little better than the other; it is, what we call in transferring, 'doubled' and 'mashed.' The notes are doubled and stretched on both notes, but more so on the 'C' notes.

"There is no great amount of difference that I see in the angles at which the lines cross. The lines in the work which I have referred to cross at very nearly the same angles. Cycloid work is sometimes done by a cycloidal attachment put on a geometrical lathe. The cycloid work on both these notes is of the same kind and done by the same machine. They are both of the same pattern, so far as I am able to discover. There is a different appearance to the eye between the two, one being

heavier lined than the other. I have examined the position of the arm on the top of the shield in the vignette, which, in the 'C' note, covers up the loop of the letter 'P' and part of the letter '1,' and which in the other note is visible. The loop of the letter 'P' is not on the one; either because it was not engraved, or, if it ever was engraved, it has worn out. The vignette is transferred as one piece. The process of transferring would not move the arm so as to cover a part of the 'P' if it was not so in the original.

"It very often happens that a roll, on being hardened, does not get quite hard enough. After transferring several times it becomes dull, &c., &c.; we throw it away, and make a new one. I have known rolls of that kind to have been used after they had become defective in that way."

125 Mr. DAVIS. "I desire to show you this" (giving the witness a proof containing certain parts of the seven-thirty notes claimed to be on the notes marked "K"): "Assuming that is from an engraving re-entered from a roll used in the Department, and from which the plates were produced upon which these notes were printed, I want your opinion as to whether or not that roll has in any sense become defective."

(Objected to.)

PLAINTIFFS' COUNSEL. "This proof is offered to meet a suggestion from the other side as to these differences being effected by a different roll. I desire to get the witness' opinion as to whether the roll that produced that proof is defective, and then I desire to show that, on Monday of this week, the plate which produced this proof was taken from the roll. I do this to meet the case which has been sought to be proved by the defendants."

The COURT. "Strike that all out. It was not objected to, and I admitted it. This is objected to, and I exclude it. If you move to strike out the evidence, I will strike it out."

PLAINTIFFS' COUNSEL. "Then your honor strikes out what the witness testified on this subject. I desire it."

The COURT. "Yes."

DEFENDANTS' COUNSEL. "I would like to know what it is your honor consents to strike out."

126 The COURT. "All that general testimony about the rolls becoming defective."

Counsel for defendants excepted.

"I observe a difference between the relation of the ball of the figure '1' to the heart, in the green counter, and the distances between the spurs of the ciphers in the figures '1000' in the black counter. No process of re-entering would make a change in the relative position of the ciphers to each other."

On a re-direct examination, the witness testified:

"The difference in the appearance of the position of the arm on the shield in the two vignettes is caused by one being shaded a little lower down than the other; that is the only difference. I know no mode of telling what number of plates were used in printing seven-thirty notes by the Government. I don't think there was any record kept of the number of plates prepared for printing the seven-thirty notes. I have seen vignettes and counters touched up, after transfers, by engravers; it is a common practice."

GEORGE W. TICHENER, witness for defendants, being sworn, says he is a geometrical-lathe operator, and has been such for twenty-eight

years; is quite familiar with other branches of engraving and process of making transfers and re-entries. Has also manufactured geometrical lathes, and helped to use them. "The borders on the face of the two notes, 'C 1' and 'K 1,' are geometrical lathe-work on both. I think I did a part of the original of that border; I mean the section from which that border is made. I have examined the black and green counters and the vignette. My attention has been called to the position of the arm of the vignette on the two notes. In re-entering it
127 very often happens that the roll does not run in precisely the same lines; and so, in consequence of that, it doubles, and then they are compelled to burnish it down, and keep rolling over it until it comes right up. Sometimes it has to be scraped, and after that to be hammered up from the back and put in fresh from the roll. One part of the plate can be re-entered without disturbing the rest.

Q. "Have you known, in notes printed from the same plate, as great differences as you see between these two sets of notes here, produced by defective re-entering?"

A. "I think I have from the same plate, after a great many times re-entering. After that re-entering it is customary, as a part of the process, to touch up the plate by hand."

"After it is re-entered and transferred, it is cut up by hand. If the metal has been sunk in the transfer process it is punched up, and then either touched up by hand or re-entered again; sometimes it is hammered up. The roll itself very often becomes injured by use. In such case they take up a new one or fresh roll."

Q. "Does it not sometimes occur that, in the process of burnishing a roll, a portion of the work on the roll becomes obliterated and erased, or in other respects changed?

PLAINTIFFS' COUNSEL. "Your honor is allowing the same line of testimony which was excluded before."

The COURT. "If it is objected to I will exclude it, upon the ground that it must be shown that some such thing was done with these plates."

PLAINTIFFS' COUNSEL. "That I do not object to."

128 DEFENDANTS' COUNSEL. "I understand the court rules that I am not entitled to offer evidence of this description unless I show that these processes described were actually applied to the plates from which these notes were printed. If that is so, I will guide myself accordingly."

The COURT. "You may show that, in the experience of this witness as an engraver and transferrer, he never knew an accurate transfer to be made; but you cannot show that in some cases, in re-entering, blunders have taken place in the process, without you show that they have taken place in this case. If such a blunder was made, the presumption is that he would throw the plate away and make a new one."

Evidence excluded.

Defendants' counsel excepted.

"Mashing is where the little dots and cuts, after they are raised up on the roll from the original bed-piece, soften and become flattened down. If they flatten, of course they make a very wide line, much wider than the original. The same defect must appear on the plate. Re-entering is a very nice process, and requires skill and experience.

"The green counters on the two notes 'C' and 'K' are lathe-work. They are made in sections; and when made in sections a new roll is taken from them. I have been in the habit of cutting seals like those on these notes. These seals are made from a transfer steel-plate, and

then we cut out with a chisel, a sort of hammer-graver, to make these scollops. The length of these points is not all alike; some are longer than others, and their length depends upon the depth to which the spaces between has been cut. The green counters on the two
129 notes are lathe-work on both. I have examined the vignette on these notes, and observe the difference between the positions of the arm on the two vignettes. This difference is caused by adding in the shade. It might easily be produced from an imperfect die and touched up after it was transferred to the plate."

Q. "Can you, after an examination of these two specimen notes 'C' and 'K,' and, if so, state whether they were printed from the same plate in different conditions, caused by re-entering?"

(Objected to. Objection sustained.)

Defendants' counsel excepted.

On cross-examination, the witness testified: "The difference of the arm on the two notes may be produced by imperfect die, touched up on the plate after transfer from the roll. The genuine note, marked 'K,' has the appearance of being touched up. The difference in the lettering on the shield is, one looks as if it were strained a little more than the other in the transfer.

"The process of transferring might change the relative location of the parts. I see a difference in the form of the figure in the star in the border of the two notes and in the work between the stars; one looks a little clearer than the other. The black counters are geometrical-lathe work; one is more blurred than the other. I think that both of these sets of notes are printed from the same original die. If in a genuine plate there were three distinct lines at a particular point, and in another six distinct lines, I do not mean to say that the difference could be produced by doubling. With regard to the green counter, I don't know of any mode of accounting for the difference in the position of the figures, except that there is sometimes more than one bed-piece made in a bank-note engraving establishment, and in that case they don't get them just exactly in the same way.

130 "My attention is now called to the seal and to the defect in one of the teeth." Witness' attention is called to the white spot spoken of by the witness Gray. He says: "Sometimes things of that kind happen by the ink not getting on the whole of the die. The cycloidal work on the back of the notes cannot be done by hand; it must be done by machinery—both of them. There is a difference of the figures on the '$1000' black counter. They are not made by the same roll; one is a poorer roll than the other."

On redirect examination, he says: "These black counters were printed from the same original die, in the first place. It looks likely that the green counters were produced by two bed-plates. If so, the two bed-plates were produced from the same original die."

Q. "I want to ask you whether you can, from an examination of these two classes of notes, state whether or not they were produced from the same plate in different conditions, occasioned by re-entering?"

The COURT. "I have excluded that."

Defendants' counsel excepts.

On recross-examination, he says: "The roll we call a die. I mean to say that the green counters were got from the same originals, in the first place; that is my judgment. In the green counter the figures are a little further down in the one than the other; and this looks as if they had been made from two bed-pieces—that is, there has been two different bed-pieces made to make the bill."

MATTHIAS C. EATON, witness for the defendants, being sworn, testified:

"I have been engaged in the business of bank note-engraving for
131 fourteen years. Am familiar with all branches of plate-printing and transferring and re-entering. Have been connected with the Manhattan Bank-Note Company for three years. When the process of re-entering is improperly conducted, the effect upon the plate is that it produces a lighter impression; at other times it produces doubling, and it makes changes in perhaps fifty different ways. These effects are produced by reason of the mode in which the re-entry is made. It is usual to touch up the plate by hand after a re-entry. 'Hammering up' and 'mashed' are terms well known and well understood by me. I have examined the specimens of these two classes of notes. The border on the face of the two notes is geometrical-lathe work; so also is the green counter and the black counter on both. The cycloidal work on the back is done by a cycloidal ruling-machine, as is done by the same process on both notes; both have the same character of work. The shell-work on the panel on the back is also geometrical-lathe work on both notes. My attention has been called to the difference in the vignette on the two notes, particularly to the position of the arm. It strikes me that the two impressions never came from the same plate; if they did, one was taken when the plate was comparatively new, and the other when the plate was partly worn out.

"I also notice on the 'C' note that the shading under the arm is much fainter than on the other. I attribute this to a warm plate. The impression is poorer and has not the same body of color. The original die is what is known commonly as the bed-piece, from which may be made an indefinite number of rolls, and these rolls again transferred produce innumerable plates.

"This process of making the roll from the bed-plate is done by a transfer-press; is a nice operation, and depends upon the skill, &c., of the operator. I have, in my experience, known of different rolls produced from the same bed-plate, which had discrepancies and differences as great in importance and degree as those which are oberved in
132 these notes. I have an instance of that kind in my mind now."

"State the instance which you have in your mind."

The court excluded the question, and defendants' counsel excepted.

"I observe differences between the green counters on the two sets of notes. I don't think the differences could be produced by printing from the same plate occasioned by defective re-entering. I think the difference is caused from two bed-pieces, or from different rolls produced from the said two bed-pieces."

DEFENDANTS' COUNSEL. "Have you, in your experience, known as great differences produced in taking rolls from the same bed-plate as you find between the green counters?"

A. "The difficulty I would have in answering that question is simply this on the one plate."

Q. "I don't ask you about the vignette."

A. "I am showing how it is that I cannot answer so as to be intelligible to you or do justice to myself."

Q. "Give the reasons why you cannot answer that question."

(Objected to. Excluded. Defendants' counsel excepted.)

Q. "Are you able to state, from an examination of the two green counters in the different notes, whether these two counters in the two notes are produced from the original lathe-work?"

(Objected to.)

133 The COURT. "He may answer whether or not he can state it. I think the form of the question is too vague."

DEFENDANTS' COUNSEL. "I ask if he can tell, from an examination of these green counters, as an expert, whether or not the same original lathe-work produced the two, or whether they were made from the original lathe-work?"

The COURT. "I exclude the question, because it is unintelligible."

Defendants' counsel excepted.

Witness states that there is an original shell or thin piece of steel cut by a geometrical lathe, which, after being crimped to fit the roll, is put into the fire and hardened, then taken out and the temper drawn from it; this is then rolled into a flat piece of steel, and an impression made; then the flat piece, again hardened, forms the bed-piece made from the shell. There is a soft roll rolled over the hardened plate until another impression is taken from the round roll, which round roll is hardened, ank then that is fit to transfer. If you want another round roll, if it be lathe-work, to cut in the figures '1000, you take up a new roll and outline these figures on a piece of paper, and transfer the lathe-work, and you take a small graver and cut away all the surface of the lathe-work that stands out on the soft roll, in order to produce a blank space. After that the roll it fitted for hardening again, and the roll is again hardened and transferred again to another flat piece, and from that piece the figure '1000' is finished. As this is made from sections one roll must be taken up from the bed-piece made from the original shell, and then cut in sections to make up any particular form; after that that roll is hardened and another flat piece is made, which joins on to the
134 previous section, and between these pieces where they come together again is a little ridge, which is to be cut up by hand. These figures "1000" are put on after the roll has been made, from which a space has been erased sufficient to allow the "1000" to be impressed upon it. These figures may be put on at different times."

Q. "Now the question I ask is, excluding the figures '1000' from your mind altogether, can you tell from an examination of these notes whether or not the lathe-work (the residue of the counter on both notes) was made from the bed-plate you have spoken of made up from the original lathe-work shell?"

(Objected to as incompetent.)

The COURT. "I have said that form of question is not proper. The witness may be asked if, from his experience, he has known similar differences produced from the same bed-plate."

Objection sustained. Defendants' counsel excepted.

"Dismissing from consideration all reference to these figures '1000,' there is no difference between the two counters. There is no difference in the lathe-work, except that one is much more worn than the other; and I believe them both to be the same piece of lathe-work. The change in the relative position of the ball of the figure '1' to the heart results from the placing the figures '1000,' which is done by hand."

On cross-examination the witness says: "I am familiar with letter-engraving. I have had experience in entering and re-entering plates. I have re-entered a head of Seward and of Washington, and of Lincoln. I have made transfers of plates, and have transferred borders
135 and re-entered them. When in re-entering the work is doubled or mashed, it is sometimes scraped out, but not always. You can sometimes force the metal up. It depends upon how badly it is mashed; if it is badly injured, you sometimes burnish it out, stone it out or scrape it out. A great deal of work is done where the lines are doubled. I see

a difference in the work between the stars on the border. I cannot say whether it comes from the printing or whether the impression is mashed. I would not undertake to describe the difference, but I see it. I see a difference in the black counter in the spur of the second '0,' and in the distance that the figures are apart. That difference could not be produced by transferring from the same roll, but two rolls from the same bed-piece could account for it; or if it were finished up on a different piece, or finished up on the plate, there would be a difference. Two rolls from the same bed-piece would produce the difference from the shrinking of the metal of the roll. These figures '0' are many times cut up from the block. One spur of the center of the '0' is higher up in the centre and closer than the other. If produced from the same bed-piece, one spur would not be higher than the other, unless the plate were touched up by the engraver, if they both came from the same roll; but if there were two rolls from the same bed-piece there would be a difference."

Q. "How would there be a difference in two rolls from the same bed-piece without transferring?"

A. "It is just as much an impossibility for the same transfer to get the same impression on twice alike, from the same bed-piece, as for you and I to fly.

"The black counters in the two notes are not the same weight of the impression; but I find here the same trace of lines, as near as I can judge. In the 'K' note the shading of the last 'S,' in the words 'United States,' consists of three lines, and in the other of six. I think I
136 detect a difference in the color of the body of the letter 'U,' in 'United States.' In one the tooth is produced by biting in the line where in the other it looks to me as if it might be cut up; the difference is but a trifle. The panel containing the words 'Interest twenty cents per day,' is higher in one of these notes than the adjoining lathe-work. I account for this by bad transferring. It has been transferred above the line instead of on the line. The lathe-work is put on one roll and the panel on another. The difference in the letters 'B,' on the notes, I account for, because the plate has been re-entered and cut up. The same character is there—that is, according to my way of judging."

On re-examination, the witness is asked:

Q. "Look at the shading on the arm of the note 'C' in the vignette, where it laps over the shield in the two classes of notes."

A. "I perceive a difference in the shading of the arm, a difference in the length of the arm."

Q. "Does it impress upon your mind a conviction as to its being produced in any particular manner which you can recognize?"

A. "A. Yes, sir; it is produced by re-entering, and yet it appears to me to be from the graver, from touching up after the re-entry is made."

Q. "Taking into consideration all the discrepancies and differences to which the district attorney has called your attention, and to which attention has been called on the examination, can you account for them all?"

(Objected to.)

The COURT. "That is too general. You must follow the district attorney in the precise channel which he marked out, just as you have inquired in reference to the arm."

137 Q. "I will put this question: Taking into consideration all the differences to which your attention has been called in reference to

these notes, are you or not able to state whether the plates from which these have been printed came from the original bed-pieces ?"

(Objected to.)

The COURT. "I shall not admit that ; it is too loose."

Defendants' counsel excepts.

"I am familiar with the mode in which lettering and sealing together is done where the seal and the letters are blocked together. I have done considerable of it. The substance used for these blocks is sometimes type-metal, sometimes lead, sometimes wood, sometimes electrotype casts of the whole. The relative distances between the seal and the figures would be changed by the process of unlocking and making up again. It is customary to get up two or more bed-pieces for one counter or one article."

By a JUROR. "In relation to the differences in the lines in the shading, did you ever know of the taking of a transfer from the same roll that would give three lines in one and six in another ?"

A. "No, sir."

Q. "Never from the same roll ?"

A. "No, sir ; there is but one way that thing is done, and that is like this"——

(Objected to as speculative testimony.)

DEFENDANTS' COUNSEL. "In the case of a transfer of that description, can you account, and, if so, in what manner, for the additional line on one plate ?"

138 Objected to as not in rebuttal. Objection sustained ; th e court stating that the counsel had waived the question on the re-direct examination.

Defendants' counsel excepts.

GEORGE T. JONES, witness for defendants, being sworn, testified : "I am an engraver, and have been for forty-odd years. I am acquainted with the process of transferring and re-entering, and with all the branches of engraving and plate-printing. I have examined these two classes of notes. I have observed a difference in the appearance of the arm and shield, in respect to the letters on its circumference.

"The difference is so very slight, it is possible to be produced by transferring. The principal difference is in the shading. It is a little the heaviest in the 'K' note. There is a slight difference. This die"—referring to the 'K' note—"is a little doubled, slightly doubled; and that would throw it up. The partial covering up of the letters in the 'C' notes is indicated by the shading of the drapery. It is the shading that gives the difference in the appearance of the arm on the two. If the shading of the other was brought down as far as the 'C' note, it would cover the letters quite as much. I have in my experience known differences as great as that to which my attention has just been called, in reference to the vignette, to have been occasioned by defective re-entering. If re-entering is not well done, the work is apt to be doubled ; and then it must be burnished and scraped out, or otherwise remedied. The plate, after it is re-entered is frequently touched up by hand. The green counters in both classes of notes are geometrical-lathe work. Irrespective of the figures '1000,' there is no difference in the rest of the green counter, with the exception that the one is a little more worn ; no difference in the character of the figures. The difference in the posi-

139 tion of the figure '1' to the heart is owing entirely to the formation of that figure and the place in which it is put in the green counter. I am familiar with the mode by which the roll, from which the

green counter was made, was made from the geometrical-lathe bed-piece."

Q. "Do you see anything on this green counter in these two notes which enables you to state whether or not, excluding the figures '1000,' the two counters were not made from the same original geometrical-lathe bed-piece?"

(Objected to; the counsel stating that similar testimony was excluded yesterday.)

The COURT. "The witness states that he sees no difference at all, aside from the figures, between the two counters, except the lines are more worn in one than they are in the other. It seems to me that same question has been ruled out before."

Defendants' counsel excepted.

"These counters are made up in sections from an original piece of geometrical-lathe work, which sections are applied successively by a transfer-press to the plate. The figures '1000' are outlined upon the roll, and you then take a scraper and scrape off all within the outline, and leave that portion of the roll bare: then you harden that roll and transfer it to another piece of steel, and then you finish it; then harden that, and from the original bed-piece you can make as many rolls as you choose. If the figures '1000' are laid out on two different rolls, the two rolls would not be alike. They must necessarily vary; it would be a miracle almost to get two exactly alike so as the difference could not be seen.

Re-entering requires a great deal of skill, care, and experience to
140 do it well and properly. The black counters on both classes of notes are both lathe-work; so are the borders—I mean geometrical-lathe work. The lines in the black counter on the 'C' notes are geometrically correct. The same is also the case with regard to the 'K' notes; the only difference I see is that the 'C' notes are more worn than the other. I see no difference in the angles or crossings in directions. The little fine lines here and there wear off, and then you get down on the white. But I cannot see that there is any difference where you examine the outer edges and the lines run in and intersect. These geometrical lathes are very expensive machines."

Q. "What do they cost?"

(Objected to. Excluded. Defendants' counsel excepted.)

"The green counters and the black counters and the borders and the coupons on the 'C' notes were all transferred from rolls. The lettering and the bordering on the coupon were likewise transferred in the same manner."

Q. "Do you know whether this same vignette of Justice was on other currency?"

A. "I have seen it on fractional currency."

Objected to as irrelevant.

The COURT. "What is the object?"

DEFENDANTS' COUNSEL. "I desire to raise a just inference that a die, which had been used for the purpose of making transfers of rolls to print all these immense issues of fractional currency, could not be in the same condition."

The COURT. "I exclude it."

141 Mr. BURRILL: "I will make my offer. I propose to show that that same vignette appears upon the fractional currency—all the series of seven-thirty notes, first, second, and third, the compound-interest notes, and to show the amount of each of these issues."

(Objected to. Objection sustained.)

Defendants' counsel excepted.

On cross-examination, the witness states: "The differences in the vignette are produced by the shading and graving done by the engraver originally. The plate is worn, and that is a very light piece of work done by dry-pointing. The letters are plainer on the genuine, because the die is fuller and the impression is darker. I cannot tell whether the top of the loop of the 'P' was ever on the plate of the 'C' notes at all, because the shading of that sleeve comes down in the space and covers it. If it is there, it is under the lines which produced the shade. The lines producing the shade are very close and much heavier than the lines producing the letter; and then the impression, not being perfectly clear, and the lines being so close as they are, they blur. I have noticed other differences. If in the same places on the 'C' notes there are more lines clearly visible, and in other places there are less lines in number than in the other plate, in some cases it might be done by doubling; but it would show that the plate had been tampered with in some way.

"The difference in the position of the ball to the heart in the green counter can be accounted for by the wearing of the plate. The trefoil in the centre of the heart would not be affected, if every time the die went in, it went in with the same pressure and the same exactness; but if you put on more pressure in one case than in another, doubling would be produced, and in work like this, which is called patch-work, a piece of work that is not like a clean cut on the metal, it is more apt to be affected.

142 "The appearances of the plate being worn are that it is lighter, and therefore would not hold as much ink. A worn piece of work will not hold as much ink on the paper, and for this reason the lines are lighter in the black counters. I notice that in one the lines do not run up as strong as in the other. This difference arises from different transfers."

On recross examination, the witness says that he is a bank-note engraver; that he was connected with a bank-note-engraving office, and has made up transfers.

PHILIP W. HOLMES, called for defendants, being sworn—

Defendants' counsel offered to prove that the various letters, introduced in evidence from the letter-book of Jay Cooke & Co., were written or drafted by the witness, and sent by him, acting on the information derived from the subtreasurer; that the statement in reference to the notes being counterfeits was correct, without knowing anything about the identity of the notes.

(Objected to by plaintiffs' counsel. Objection sustained, and defendant except.)

EDWARD DODGE, one of the defendants, being sworn, says that the defendants' firm of Jay Cooke & Co., in New York, was formed on the 1st of January, 1866. "I never examined the notes claimed by the plaintiffs to have been transferred from our firm to Mr. Van Dyck. I did not know, nor did I examine to see, whether the notes were counterfeit. I never stated to Mr. Van Dyck that these notes were the notes our house had sold."

On cross-examination, he says: "When the eighty counterfeit notes were returned to New York there was much excitement. I heard that there had been some returned to the Treasury here, and that a part of those notes were claimed to have been sold by our house to

143 Mr. Van Dyck. I never examined the notes critically. I saw some notes, but I don't know whether they were the ones that were

claimed to be from our house. I saw some notes, that were alleged to be counterfeit, in Mr. Van Dyck's office. I don't recollect any conversation with Mr. Van Dyck about these notes. It was not my department of business at all. I don't recollect Mr. Van Dyck ever showing me these notes. I don't think Mr. Van Dyck was present when I saw the notes. Somebody said there that they were the counterfeit notes. I think it was one of Mr. Van Dyck's clerks."

Defendants' counsel reads in evidence from the deposition of Adam S. Pratt, taken under commission herein, the first seventeen questions and answers thereto, and the twenty-fifth to the thirty-third questions and answers inclusive.

Defendants' counsel offers to read the printed report referred to in the deposition as a whole.

(Objected to. Objection sustained. Defendants' counsel excepts.)

Defendants' counsel then offers to read a portion of the printed report contained on page 118, to which plaintiffs' counsel assents.

Defendants' counsel also offered to read from the 127th page of the same report seven paragraphs, down to the words "in the seals."

(Objected to. Objection sustained. Defendants' counsel excepts.)

Defendants' counsel also offers to read from the same page of the said report the 8th, 9th, and 10th paragraphs.

(Objected to. Objection sustained. Defendants' counsel excepts.)

And a copy is set forth in the schedule of exhibits hereto annexed.

144 GEORGE W. CASILEAR, being recalled by defendants, testifies:

"The only record which I have here is a record of the plates. I have two books in Washington—one a record of dies, and the other a record of rolls—which I have not brought. These books will not show what was done with the rolls and dies. It does not tell when any particular bed piece used on these notes was made. I could not tell from anything here how many different rolls were made from sections of the same lathe-work. The green counter on these 'K' notes came from the same lathe-work as is found on the fifty-cent currency stamp. Sections of the same die made all these. The design on the seven-thirty notes, issued under the acts of 1864 and 1865, was the same, with the exception of the date and the check-letters. By this book it appears that between July 29th, 1864, and August 12th, 1864, the three subject-plates for the seven-thirty notes were made. Those plates have been destroyed. There were four plates of the back, and three of the front, and three of the tints. This book shows that on the 7th of September, 1864, plate No. 1, for the $1,000 seven-thirties, second series, obverse, was made; and on March 15th, 1865, the second of those plates was made; and on March 20th, No. 3 was made.

"There were four backs: one of September 7th, 1864; one of March 15th, 1875; one of April 24th, 1865; and one of May 11th, 1865. The number of the first plate, or the back plate, does not always correspond with the number of the plate of the face. No. 4, back, might be printed on the notes which were printed from No. 1, face, and No. 3, tint. The first of the three subject-plates was printed August 24th, 1864; and the first of the four subject-plates was printed September 4th, 1864. The first of the three subject-plates went to the printing-room on the 29th of July,

1864, and was returned on the 27th of October, 1864. It is pos-

145 sible that these notes could have been printed before the act of 1865 was passed. We did that sometimes. We probably intended these plates for the original act of June 30th, 1864; but the notes printed from them were afterwards issued under the act of 1865. We probably

got them up, and had them all ready whenever they were called for. The backs and tints might be printed, because they have not the dates on them, to get a larger number printed, and the face could be put on them at any time. I find by the entry here that the obverse plate, No. 1, of the four subject-plates went to the press for printing on the 6th of March, 1865. The obverse means the face. According to my recollection, the reverse of these four subject-plates were printed before the face. Here is another reverse, No. 1, of four subjects, went up to be printed on 24th March, 1865; and on the same day the obverse of the second plate of four subjects went up; and the tint of the second plate of four subjects went up on the 8th of April; and on the 18th of April the tint, No. 3, of the four subject-plates went up; and on the 25th of April, the reverse of No. 3, of the four subject plates, went up. On the 10th of May, 1865, a three subject, tint, and on the 14th of May, 1865, a reverse of three subject-plates were sent to the printing-office; and on the 17th May, an obverse of the three subjects went there; and on the 3d of June 1865, a tint of the three subjects went there. After the first plate of four subjects went up to the printer, I find that three subject-plates of $1,000, and likewise of seven-thirties of other denominations, were sent up, so that the printer had on hand plates of four subjects and plates of three subjects at the same time, of the denomination of $1,000 as well as of other denominations."

On cross-examination, the witness says: "The three-subject plate bore the date of June 30th, 1864, act of June 30th, 1864. I think we may have altered that date. In making up the stock of these seven-
146 thirty notes, there never was a bed-piece duplicated, except in one instance, and that was the 'Treasury Department,' immediately under the vignette. That small panel was duplicated, because the original bed-piece got cracked, and we had to take up another roll. I think there were two or more rolls of the vignette, but there was but one roll of the black counter and of the green counter.

"There was but one roll used in laying down and re-entering on this plate. I took an impression from this roll. We laid it upon a piece of steel and made a transfer. It was done by one of the men, and I stood by him when he was doing it; and I afterward got proof from the prover, right in the same room. I am referring to a proof of the two counters, title, vignette, and the denominational title, and the three panels, 'Three years after date,' 'Treasury Department,' and 'Act of March 3, 1865.' I didn't examine to see whether these all came from the same roll; but in relation to these counters, I examined very carefully, and had a young man to examine who kept the stock with me, and we only found one with the original number on.

"These two counters are both on the same roll. I know we did take a duplicate of the vignette. We have three or four of the star border. We have two bed-pieces of the 'Treasury Department'—a second one to make another roll. We never used but one roll and one bed-piece. I delivered these various rolls to the transferrer, and saw him make the transfer, and saw the printing done. This proof was taken within the last three or four days. When I was in the Treasury Department, the other day, since I was examined, I didn't look into the records to see whether there was more than one roll of these various parts of the plate.

"We had one roll of the vignette furnished us by the American Bank-Note Company at the same time they turned over the die to us. We used the die on the three-years' interest-notes. They gave us but one roll of the vignettes. I didn't like that roll, but I made a dupli-

147 cate, or may have made two duplicates. Both these rolls were taken from the same bed-piece. I saw these two struck from the plate I made the other day."

Plaintiffs' counsel hereupon offered in evidence the proof of the engraving referred to by the witness, made last Monday from the new plate—made under his directions from the rolls referred to by him, of the green counter: the panel, "Act of March 3, 1865;" the panel, "Three years after date;" and the five coupons attached. Of which it was proved by the witness that there was never but one bed-piece and one roll made or used, and that from the plate from which the engraving offered was printed on Monday.

(Counsel for defendants objected. Objection overruled, and defendants' counsel excepted.)

The witness, on further examination by the counsel for the plaintiffs, testified: "The four subject-plates used for the second series were used for the third series—the same plates, but we altered the dates from time to time. I cannot say positively. I didn't print the notes. I don't know whether the plates were altered to conform to the requirements of the third series. I know that the notes of the third series were printed from the three subject-plates."

On re-examination by counsel for the defendants—

Q. "Did you say the three subject-plates were not altered for the second series?"

A. "I say they were altered—I don't know whether the third, fourth, or second series; my impression is they were altered for the third. They were altered to print these notes."

Q. "Do you know whether the three subject-plates of the act of 1864 were or were not altered to print the second series or the third series of the seven-thirty notes?"

148 A. "They were altered to print the series of July 15th, 1865."

Q. "Were they altered to print the series of June, 1865?"

A. "No, sir. When I made this engraving, or this proof which has been offered in evidence, I made an entirely new plate from the roll, and took this from that new plate."

Testimony here closed on both sides.

The defendants' counsel requested the court to instruct the jury as follows:

First. That in order to entitle the plaintiffs to recover they must show that the eighteen notes produced on the trial, and marked "C 1" to "18," were the identical notes which were delivered by the defendants to the assistant treasurer of the United States.

Second. That in order to entitle the plaintiffs to recover they must also show that the said eighteen notes, marked "C 1" to "18," were delivered to the assistant treasurer of the United States between the 20th day of September and the 9th day of October, 1867.

Third. That in order to entitle the plaintiffs to recover they must further prove that the money paid to the defendants for said notes was the money of the United States.

149 Fourth. That the burthen of proving that the eighteen notes in question, "C 1" to "18," are not genuine obligations of the United States rests upon the plaintiffs; and if the evidence be insufficient to establish the fact that such notes are not genuine obligations, as aforesaid, the defendants are entitled to a verdict.

Fifth. That in determining whether the eighteen notes in question are genuine obligations, the jury are entitled to take into consideration the

fact that said notes were supposed to be genuine by the assistant treasurer in New York, and passed through his hands and the hands of other officials connected with the Treasury Department.

Sixth. If the defendants honestly believed the notes in question to be genuine obligations issued by the United States, and so believing and in good faith passed them to Mr. Van Dyck, the assistant treasurer of the United States, and the latter, under the like belief and in good faith, received the notes and paid for them, the plaintiffs are not entitled to recover, although the notes may not have been genuine obligations issued by the United States.

The court charged the jury as follows:

150 DECEMBER 6, 1870.

GENTLEMEN OF THE JURY: This case, to which you have given such patient attention for thirteen days, filled as some parts of it have been with details not in themselves very interesting, and perhaps rather tedious, is one of the most important cases in which it can be the privilege of any citizen to take part, either as judge, prosecuting officer, counsel for the defence, or juror, because it concerns deeply the interests of every man in the community Every one of us, as a citizen of the United States, has an interest in seeing to it that this immense mass of debt, which has been created by the Government for the protection of our rights, our liberties, and our perpetuity as a nation, shall not be counterfeited, falsely issued, and palmed off upon the community, and even upon the subordinate officers of the Government, in redeeming its indebtedness, imposing in such case on the Government the necessity of resorting to actions like the present one, for the purpose of recovering what may be its just due. The loss resulting from counterfeit paper of this kind must fall on some one in the community, and almost certainly on some party who is really entirely innocent of any complicity with the spurious issue. So, on the other hand, every citizen dealing or liable to deal in spurious articles of this description, is interested that no piece of paper shall be pronounced spurious which is in reality genuine. Therefore it is that this case has been tried with so much care upon the part of the Government, with so much patience on the part of the court and jury, and with so much assiduous fidelity on the part of the counsel for the defence.

In the remarks which I shall have to make to you, I shall not
151 detain you long. The claim which is made by the Government I shall submit to you upon those counts of the declaration in respect to each one of the eighteen pieces of paper, which are in substance to this effect: That, on a certain day named, one thousand dollars, and some additional amount by way of interest, was obtained by the defendants, Jay Cooke & Co., from the United States, on the occasion of the defendants having delivered to the United States what purported to be a certain obligation of the United States, known as a seven-thirty note, and a coupon attached, for the principal sum of one thousand dollars and certain interest; to wit, a note bearing seven and thirty and one hundredths per cent. interest per annum, and numbered so and so, of the series of seven-thirty notes issued June 15th, 1865, by the United States, together with an interest-coupon attached to said note, calling for interest to June 15th, 1868, which note, with such coupon attached, was, by the defendants, at the time they delivered it to the officer of the subtreasury of the United States, professed to be, and by the plaintiffs was, when received by them, supposed to be, a genuine note of the

United States, with a genuine coupon attached; and that by the representations and inducements of defendants, then and there practised, the same was received by the United States and their said officer as a valid and genuine note, with the coupon attached, at the subtreasury of the United States; whereas the note and coupon were in fact counterfeit, and neither of them had ever been executed or issued by the United States, their officers or agents, but had been forged and falsely made and uttered, and were no obligation whatever of or upon the United States, and were by them, to wit, by their said officer, received under the belief, created by such representations and inducement, that the said note and the coupon attached were good and formed a valuable and adequate consideration for the money received by the defend-
152 ants, which was retained from the plaintiffs after the discovery that the said note and coupon were counterfeit, whereof prompt notice was given to defendants. Then follow the usual averments to constitute what is called in law an action of assumpsit.

You will perceive that this declaration asserts three things, and those three things must every one of them be proven in favor of the United States to entitle it to recover in this action; for if any one of the three shall be found by you in favor of the defendants, the defendants will be entitled to your verdict. Those three things are these: first, that these eighteen pieces of paper, marked "C," and called throughout this trial the "C" notes, are the ones alluded to in the declaration, and were delivered to the United States by the defendants; second, that the United States paid their money for them; and, third, that they were not issued by the United States under any act of Congress.

The law under which these transactions took place, and of which you have heard so much in the course of this trial in connection with the redemption, retiring, or withdrawal of the notes called seven-thirty notes, is the act of April 12th, 1866, (14 U. S. Stat. at Large, 31.) The words of that act on this subject are very few. It authorizes the Secretary of the Treasury to dispose of any description of bonds authorized by the prior act of March 3d, 1865, "either in the United States or elsewhere, to such an amount, in such manner, and at such rates as he may think advisable, for lawful money of the United States, or for any Treasury-notes, certificates of indebtedness, or certificates of deposit, or other representatives of value which have been, or which may be, issued under any act of Congress, the proceeds thereof to be used only for retiring Treasury-notes, or other obligations issued under any act of Congress." This is the simple provision under which the retiring of the seven thirty notes took place. The authority it conferred
153 upon the Secretary of the Treasury, and the subordinate officers of the Treasury Department, was solely to retire Treasury-notes issued under some act of Congress. If they were not issued under some act of Congress, they were not within the lawful powers delegated to the Secretary of the Treasury by the act of 1866. The entire matter is regulated by statute, and if these notes were in fact not issued under an act of Congress, there was no authority on the part of the Secretary of the Treasury, or of any other officer, high or low, not even the President of the United States himself, to retire or redeem them.

To this defendants' counsel excepted.

The law-making power is the omnipotent power in that respect, under the Constitution of the United States; and Congress having declared that the only notes which could be retired were those issued under an act of Congress, no other notes could be so retired.

To this defendants' counsel excepted.

There are two other statutes to which I must refer in this connection. The notes in question here, both those marked "K" and alleged to be genuine, and those marked "C" and alleged to be counterfeit, purport to be issued under an act of Congress, passed March 3d, 1865. (13 U. S. Stat. at Large, 468.) All of the notes, thirty-six in number, the eighteen marked "K" and the eighteen marked "C," bear date June 15th, 1865, and belong to what is known in the parlance of dealers in Government securities as the second issue of seven-thirty notes. This act of March 3d, 1865, which was the authority for the issue of these notes, if they be genuine, contains generally these provisions, that the Secretary of the Treasury is authorized to borrow so
154 much money, and to issue therefor Treasury-notes, in such form as he may prescribe, redeemable so and so, to be of such and such denominations, interest to be payable semi-annually, the rate when not payable in coin not to exceed seven and three-tenths per centum per annum, and the rate and character of the interest to be expressed on such bonds or Treasury-notes. Then it provides that he may dispose of any of these obligations as he may think advisable, for coin or other lawful money of the United States, or for Treasury-notes or other obligations, issued under any act of Congress, and may issue Treasury-notes authorized by the act in payment for any requisitions for materials or supplies for the Government. The third section of the act provides that all the provisions of the act of June 30th, 1864, (which was the act under which the first series of seven-thirty notes was issued,) in respect to forms, inscriptions, devices, and the printing, attestation, sealing, signing, and counterfeiting thereof, with such others as are applicable, shall apply to the obligations issued under this act of 1865.

This remits us to the third statute, to which I shall refer, and that is the act of June 30th, 1864, (13 U. S. Stat. at Large, 218,) in respect to the forms of the notes and the inscriptions and devices on them. This act of 1864 contains the general provision that the Secretary of the Treasury may issue these Treasury-notes, bearing this rate of interest, seven and three-tenths per cent., and that he may dispose of them upon the best terms he can for lawful money. Then at the close of the sixth section occurs a provision that the Treasury-notes authorized by the act to be issued by the Secretary of the Treasury "shall be in such form as the Secretary shall direct, and shall bear the written or engraved signature of the Treasurer of the United States and the Register of the Treasury, and shall have printed upon them such statements,
155 showing the amount of accrued or accruing interest, and the character of the notes, as the Secretary of the Treasury may prescribe; and shall bear, as a further evidence of lawful issue, the imprint of the seal of the Treasury Department, to be made under the direction of the Secretary of the Treasury, as before directed." This provision is made applicable, by the act of 1865, to the sealing and signing of the notes of the second series; and it requires, as a further evidence of the lawful issue of the notes—the genuine notes, those in fact issued—that they shall bear the imprint of the seal of the Treasury Department, to be made under the direction of the Secretary of the Treasury. The use of the expression, "as a further evidence of the lawful issue," necessarily intends that what has been just prescribed in respect to the imprints of the signatures of the Treasurer and the Register, and to the statement showing the amount of interest accrued or accruing and the character of the notes, shall be taken as evidence of lawful issue.

On the point of the notes having printed upon them statements show-

ing the amount of interest accrued or accruing, you will recollect that each note was issued with five coupons. The principal was payable in three years; and, the interest being payable semi-annually, five coupons were attached to each note, representing five instalments of interest, while the sixth instalment was to be payable without a coupon, when the principal should be payable, on the presentation of the note.

As I have said to you, there are three questions here involved: First, the reception of the notes marked "C" by the Government from Jay Cooke & Co.; second, the payment therefor by the Government to Jay Cooke & Co.; and third, whether the notes, if they were received from Jay Cooke & Co., had been previously issued by the Government. The first two questions I shall treat as one, they having been so treated by the counsel; and that is, whether the transaction alleged took place in
156 fact between the officers of the subtreasury here and Jay Cooke & Co., in respect to these notes marked "C." On that subject I have no instructions to give you, except to say that it is a simple question of fact for your determination. You have heard the evidence and the discussions of counsel upon that branch of the case. There is no question of law involved in it. It is for the Government to satisfy you, by preponderating evidence, that these "C" notes were, as is claimed in the declaration, received at the subtreasury here, by the proper officer there, from some person representing Jay Cooke & Co., and were paid for by the United States to some person representing Jay Cooke & Co., in money or other valuable consideration that was the property of the United States, representing the face of the notes and the accrued interest thereon. It is simply a question of fact, and on that point I charge you in accordance with the defendant's request, that in order to entitle the plaintiffs to recover, they must show that the eighteen notes produced on the trial, and marked "C 1" to "C 18," were the identical notes which were delivered by the defendant to the assistant treasurer of the United States. I charge you, further, that a delivery to the assistant treasurer of the United States takes place when the notes are delivered to the proper officer acting under the authority of the assistant treasurer.

I am also asked to instruct you that in order to entitle the plaintiffs to recover, they must also show that the eighteen notes marked "C 1" to "C 18" were delivered to the assistant treasurer between the 20th of September and the 9th of October, 1867. The counts in the declaration are to the effect that the first one of these notes, No. 68446, was delivered on the 21st of September, and the last one on the 8th of October. Therefore the dates stated in this request are according to the averments in the declaration, if the notes were ever received at all. There
157 is no evidence on the subject as to when they were received, except as to times within the dates named in the request; but the Government must satisfy you that the declaration is proved, and that the "C" notes were received between those dates.

I am also requested to charge that, in order to entitle the plaintiffs to recover, they must further prove that the money paid to the defendants for the notes was the money of the United States. That is true.

I shall now pass to the other branch of the case, and that is, whether these "C" notes were issued by the United States; because if you find that in point of fact these "C" notes were not issued by the United States, then the plaintiffs are entitled to recover, provided you also find that these "C" notes are the identical notes delivered to the Government by Jay Cooke & Co., and for which the Government gave to Jay Cooke & Co. the money alleged in the declaration.

To this defendants' counsel excepted.

As has been remarked by the district attorney, the ultimate question in this case is not whether the "C" notes are spurious or genuine, or whether the "K" notes are spurious or genuine; that is a collateral question; and the whole investigation into the question whether the "K" notes are genuine and whether the "C" notes are spurious, has been gone into as bearing upon the question whether the "C" notes were ever issued by the United States.

I shall call your attention to some matters in connection with each branch of the question in regard to the issue of the notes. There is a class of evidence on this subject, aside from any comparison between the "C" notes and the "K" notes. There is also a class of evidence that arises from a comparison of the "C" notes
158 with the "K" notes in reference to the question whether the two sets of notes were or were not printed from the same plates; because it is an argument in the case, urged by the Government, and the challenge is accepted by the defence, that if the "C" notes are shown to be spurious, and not to have been printed from any plates which the Government of the United States used in printing notes which it issued, the presumption arises that the "C" notes were never issued by the United States. There are four points of view from which the genuineness or spuriousness of these notes may be considered. The "C" notes and the "K" notes are both of them spurious, or the "C" notes and the "K" notes are both of them genuine, or the "C" notes are genuine and the "K" notes are spurious, or the "K" notes are genuine and the "C" notes are spurious. In considering the question, it undoubtedly is of assistance toward arriving at a determination whether one of two things is spurious, to be satisfied first whether the other of the two is genuine. In other words, it will assist you in determining whether or not the "C" notes are spurious if you can determine first whether or not the "K" notes are genuine; because you may be entirely satisfied that if the "K" notes are genuine the "C" notes must be spurious. In other words, if you arrive at the conclusion that the "K" notes are genuine notes, it may follow, in your judgment, as a necessary conclusion, that the "C" notes are spurious. As I have understood the course of the defence, from the evidence and the summing up, the deduction sought to be drawn from the evidence is, that the "C" notes are genuine notes and were issued by the United States; but I have not understood the position to be taken by the defendants that the "K" notes are spurious notes. It is, however, for you, on the evidence, to pass upon this question.
159 As I said before, it may be that if you are satisfied that the "K" notes are genuine notes, you will conclude that the "C" notes also cannot be genuine. On this point you will recollect the testimony of Mr. Casilear, when he was first on the stand, and afterwards when the books were produced, showing the commencement of the printing of the second series of notes on the 5th of March, 1865, two days after the passage of the act authorizing their issue. The effect of his testimony, if it is to be believed, is, that these notes of the second series were printed from three plates of four subjects each, plate 1, plate 2, plate 3, each with four subjects—that is, four notes on each plate. For the purpose of illustrating this matter I have put into a tabular form what is testified to by one of the witnesses in regard to the check-letters which he finds on the "C" notes and the "K" notes, it being assumed, for the purposes of this table, that the "K" notes were printed from three plates of four subjects each. The first plate, or plate 1, I throw entirely out of view, because none of the thirty-six notes appear to have been printed on plate 1. Of the "K" notes seventeen appear to have

been printed from the second plate and one on the third plate. All of the "C" notes appear to have been printed from the second plate. The table shows plate 2 with four notes on it, and plate 3 with only one note on it, and that one the first note, at the top of the plate. According to the testimony of the witnesses, the system of check-letters adopted and used was this: The first note on the plate was lettered "A," the second "B," the third "C," and the fourth "D." But with three plates of four notes each, each plate having those four letters, and these alone, in its four several subjects, it would be impossible to tell, from the face of a note upon which one of the three plates, a note with a given check-letter, was printed. Therefore, for the purpose of enabling it to be told on which one of the three plates a given note was printed a small "A" was en-
1.0 graved underneath each one of the four several letters, "A," "B," "C," "D," on the first plate; a small "B" was engraved underneath each one of the four several letters, "A," "B," "C," "D," on the second plate; a small "C" was engraved underneath each one of the four several letters, "A," "B," "C," "D," on the third plate. Locating the eighteen "K" notes and the eighteen "C" notes according to their large and small check-letters by the arrangement which I have just explained, it appears that seven of the "K" notes have the check-letter "A" with a small "B" under it, and were therefore printed from the first subject on the second plate. Four of the "K" notes have the check-letter "B" with a small "B" under it, and were printed from the second subject on the second plate. Three of the "K" notes have the check-letter "C" with a small "B" under it, and were printed from the third subject on the second plate. Three of the "K" notes have the check-letter "D" with a small "B" under it, and were printed from the fourth subject on the second plate. One of the "K" notes has the check-letter "A" with a small "C" under it, and was printed from the first subject on the third plate.

I turn now to the "C" notes. Every one of them has either the check-letter "A" with a small "B" under it, or the check-letter "B" with a small "B" under it, there being eleven with "A" and a small "B," and seven with "B" and a small "B." The same system of interpretation that was applied to the "K" notes shows that the eleven "C" notes which have "A" and small "B" were printed from the first subject on a second plate, and that the seven "C" notes which have "B" and a small "B" were printed from the second subject on a second plate; but there is nothing to indicate that the plate from which the "C" notes were printed had upon it any but the two subjects. There is, however, incontrovertible evidence that the "K" notes must have
161 been printed from a second plate of four subjects, because there are notes marked "K" with the several check-letters "A," "B," "C," and "D," and a small "B" under each of them, such small "B" indicating a second plate, and the four large letters, "A," "B," "C," and "D," indicating that such plate had upon it four subjects.

There is another view of this matter, which to your minds may corroborate the testimony of Mr. Casilear, that in point of fact these "K" notes were printed from plates of four subjects. You will recollect the testimony as to the notes being numbered consecutively in the Treasury Department. It is a fact, and is shown by this table, that every one of the "K" notes which was printed from the first subject on a plate bears an odd number—that is, a number terminating with 1, 3, 5, 7, or 9; that every one of the "K" notes which was printed from the second subject on the plate bears an even number—that is, a number terminating with 0, 2, or 6; that every one of the "K" notes which was printed from the

third subject on the plate bears an odd number—that is a number terminating with 5 or 7; and that every one of the "K" notes which was printed from the fourth subject on the plate bears an even number—that is, a number terminating with 2, 4, or 6. Now, it is quite evident that if you have a plate of three subjects only, this uniformity in respect to the notes printed from the first and third subjects on the plate bearing always odd numbers, and those printed from the second subject on the plate bearing always even numbers, could not be preserved in a system of consecutive numbering, because you would require for each subject, alternately, even and odd numbers. Thus, beginning with No. 1 for the first note printed from the first subject on the plate, the second note printed from that subject would be numbered 4, the third note 7, and so on. The notes printed from the second subject would be num-
161½ bered 2, 5, 8, and so on; and those printed from the third subject would be numbered 3, 6, 9, and so on. These considerations apply to the question as to whether it is possible that the "K" notes could have been printed otherwise than from plates of four subjects each.

As to the "C" notes: Every one of them which has the check-letter "A," and thus purports to be printed from the first subject on a second plate, bears, as do the "K" notes which have the check-letter "A," an odd number—that is, a number terminating with 1, 3, 5, 7, or 9; while every one of the "C" notes which has the check-letter "B," and thus purports to be printed from the second subject on a second plate, bears, as do the "K" notes which have the check-letter "B," an even number—that is, a number terminating with 0, 2, 4, or 6. There is, therefore, this similarity between both sets of notes: Every note which has the check-letter "A" bears an odd number, and every note which has the check-letter "B" bears an even number. There are none of the "C" notes which have a check-letter "C" or a check-letter "D." This shows that none of them purport to have been printed from the third or fourth subject on a plate.

I shall allude to but one matter connected with each of the two classes of evidence to which I have referred. I shall first speak of a matter which struck my mind with great force, as the evidence in respect to it was given on the trial, but which has not been alluded to by the counsel in summing up. Mr. Casilear testifies to the fact (and it is readily seen by an inspection of the notes themselves) that on each one of the four "K" notes which are printed from the second subject on the second plate, namely, "K 1," "K 9," "K 15," and "K 18," the loop of the letter "p" in the word "Spinner"—the engraved signature of the Treasurer of the United States, which is required by law to be put
162 on the notes—is brought down in such a manner that the dark line of the loop, as it passes through the border composed of stars, goes through the rays of a star, and divides them into two parts; whereas, on each one of the seven "K" notes which are printed from the first subject on the second plate, namely, "K 2," "K 5," "K 6," "K 8," "K 10," "K 16," and "K 17," the loop of the letter "p" in the word "Spinner" does not cut or divide the rays of a star, but on the contrary the whole of such rays are clearly visible within the loop. There is a difference, therefore, in the position of the loop of such letter "p" with reference to the rays of the star, between the "K" notes printed from the first subject on the second plate and the "K" notes printed from the second subject on the second plate. Mr. Casilear also states, and it is plainly to be seen, that on every one of the eighteen "C" notes, whether it has the check-letter "A" or the check-letter

"B," the rays of the star are seen entire inside of the loop of such letter "p," and are nowhere cut by the loop.

It is for you to say what deductions you will draw from these facts, in respect to the question whether the "C" notes and the "K" were printed from the same plate or set of plates, irrespective of the question as to which of them are of the genuine issue.

On the class of evidence which is directed to a comparison between the two sets of notes—what is to be seen in making such comparison, and what deductions are to be drawn from what is seen, when the facts are presented in a clear and distinct form and collated—I shall allude to but one point. It is one which was commented upon by the district attorney. It has a bearing on the question, which, as I stated, you may decide to determine before approaching the subject of the issuing of the notes—the question as to whether the "K" notes are or are not genuine; because if it is established to your satisfaction that the "K" notes are genuine, you may, perhaps, be led the more quickly to
163 the solution of the question as to the genuineness of the "C" notes.

It is testified, and the evidence is not contradicted, that every one of the "K" notes had appended to it and forming a part of it, when it was issued by the Treasury Department, the five coupons to which your attention has been called, and that the coupons on each note were numbered severally, 1, 2, 3, 4, 5, (and so numbered that No. 1 should be cut off first and the rest in succession, and No. 5 last,) and that each coupon was also numbered with the number of the note. The Government has produced here, from the files of the Department, the "K" notes, which correspond in numbers with the "C" notes, and in every case where any "K" note has not now attached to it coupons which formed an integral part of it when it was issued, the Government has produced from the same files certain coupons which it claims make up, with the coupon or coupons now attached to the note, all the five coupons which ever belonged to it. One of the "K" notes has yet attached to it two coupons, and others of the "K" notes have but one coupon attached, and still others have no coupon attached. Here are the notes and here are the coupons so produced—single coupons corresponding in numbers with the "K" notes, and without duplicates; and it is testified that no duplicate coupons could be found on searching in the place where these coupons were found. Every one of the "C" notes produced has upon it the coupon numbered 5, and no one of the "C" notes has upon it any other coupon. The loose coupons so produced must be applied to the one or the other of these sets of notes, if they belong to the one or the other. Some loose coupons numbered 5 are produced. In every instance where one is produced, it is found that the "K" note which corresponds in number with the number on such coupon, has not now attached
164 to it any coupon numbered 5. But no one of such loose coupons numbered 5 can be regarded as belonging to any "C" note, because every "C" note has now upon it a coupon numbered 5. Therefore, whatever other conclusion you may come to, it is perfectly clear, if there was to each note one and only one coupon numbered 5, that, as each of the "C" notes has upon it now a coupon numbered 5, the loose coupons numbered 5, which are now produced, must have belonged to some other notes than the "C" notes. When the Government produces certain notes which were issued with coupons, and produces also loose coupons found in its possession, and when, if you apply such loose coupons to the "K" notes, the "C" notes are left each with only one coupon and with four other coupons unaccounted for, it is for you to say, as bearing

on the question of the genuineness of the "C" notes, what inference you will draw from any failure to account satisfactorily for the four coupons that are missing from the "C" notes. These considerations apply to the question of the genuineness of the "K" notes, as bearing also upon the question of the genuineness of the "C" notes. In this connection you will recollect the testimony of Mr. Gray, who states that on all the "K" notes which have now appended to them a coupon numbered 5, he finds the positions of the seal and of the figure 5 on such coupon, relatively to each other, to be in all cases the same, by actual measurement. There is, by measurement, the same distance laterally between the figure 5, on every coupon numbered 5, that is now appended to a "K" note, and the projected line of the seal on such note.

In regard to the "C" notes: Mr. Gray says that in the whole eighteen (each of them having appended to it a coupon numbered 5) there is, by measurement, the same distance laterally between every one of such coupons numbered 5, and the projected line of the seal on the note.

165 But he also says that the distance between the line of the seal and the figure 5, on the coupon numbered 5 on the "K" notes, is over one-quarter of an inch greater than the like distance is on the "C" notes. It is for you to say what conclusions you will draw from these facts. The rule of law in regard to the application of evidence of a circumstantial character, like much of that in the present case, is this: if, in respect to a certain theory, you find any one circumstance clearly proved that is utterly inconsistent with that theory, that fact is sufficient to destroy the theory entirely. If, in respect to any point of evidence that is of a circumstantial character, you are satisfied by proof of the existence of any one circumstance that is entirely inconsistent with any theory advanced on either side in regard to either one of these two sets of notes, that theory must necessarily be regarded as unsound. This rule applies to every branch of the case where the evidence is circumstantial.

To this defendants' counsel excepted.

The Government has given certain evidence by Mr. Meloy and Mr. Irwin, in respect to the sending out from the Treasury Department of certain notes, which it claims were the "K" notes, with a view to show that such notes were in fact issued by the United States. Mr. Meloy, it is claimed, wrote the receipts and letters which accompanied seven of the notes, and sent out the receipts unsigned with the notes, and received back signed the receipts which are produced.

Mr. Irwin, it is claimed, sent out receipts unsigned with all the rest of the notes, except one, and received back such receipts signed.

The note for which there is no receipt is, it is said, one which was sent with others to a person, whose name is given, in exchange for other notes, which had inadvertently been issued to his order.

166 The act of issuing the notes was, under the statute, a physical act. The notes may be printed in the Department from the genuine plates, and may be all ready to issue, and yet, if they are not in fact issued, they do not come within the statute.

To this defendants' counsel excepted.

It is for the purpose of showing the physical act of issuing the notes, that the Government has given the testimony to which I have referred. The United States are not bound to redeem any notes which were not in fact issued. There is no authority to retire the notes unless they were issued as a physical fact.

To this defendants' counsel excepted.

In addition to the evidence alluded to, the Government has also given

evidence, in respect to the recording and numbering in a book, of every one of these notes as it was issued—a book called the "numerical register." It has also given evidence that no one of these notes that were issued was ever duplicated in number. Mr. Irwin states that the whole number of seven-thirty notes of the second series, of the denomination of one thousand dollars, which was issued, was 180,272; that they were numbered consecutively from No. 1 to No. 180,272, both inclusive; that, so far as he knows, no duplicate number was ever issued, and that no duplicate numbers ever came back to the Department, except the eighty alleged counterfeits, of which the eighteen in question in this suit constitute a part.

In this connection, as bearing upon the question of the genuineness of the "K" notes, (which question, as I stated before, you may deem it proper to approach first in the consideration of the subject,) you
167 will not lose sight of the inquiry which I put to one of the witnesses when I asked him to examine the numbers on the "K" notes and see if he could discover any marks of those numbers having been tampered with, effaced, obliterated, or mutilated in any manner, and he said he could not. I do not consider it necessary to detain you longer. It is for you to say whether any of these "C" notes were in fact passed to the Government by the defendants and paid for by the Government with its money, and, if so, whether such notes were ever issued by the United States.

In determining the question as to the issuing of the "C" notes, a satisfactory conclusion, as to whether such notes were printed from genuine plates gotten up by the Government, will undoubtedly narrow the inquiry very much.

A determination that such notes were printed from such genuine plates, would lead to the conclusion, prima facie, that if such notes got into circulation in the community, they were probably issued by the Government; and thus the burden of proof would be thrown upon the Government to show that they were not issued; but after all the whole case comes back to the question whether the notes marked "C" were ever issued by the Government.

To this defendants' counsel excepted.

Upon that question I am requested, by the counsel for the defendants to charge you that "the burden of proving that the eighteen notes in question, marked 'C 1' to 'C 18,' are not genuine obligations of the United States"—and by that must be understood obligations issued by the United States—"rests upon the plaintiffs; and if the evidence be insufficient to establish the fact that such notes are not genuine obligations"—that is, obligations issued by the United States, as aforesaid—"the defendants are entitled to a verdict." With the alteration
168 which I have thus made in the wording of the request, I charge you that the proposition is correct. I am also requested by the counsel for the defendants to charge you that "in determining whether the eighteen notes in question are genuine obligations, the jury are entitled to take into consideration the fact that said notes were received as genuine by the assistant-treasurer in New York, and passed through his hands and through the hands of other officials connected with the Treasury Department." I decline so to charge. The allegation in the declaration is, that the notes were "supposed to be genuine" by the assistant treasurer and his officers. The language of the request assumes a fact which it is not for the court to assert—that is, that the notes were "received as genuine." The averment of the declaration, that the

notes were supposed to be genuine, is the extent to which the court has any right to make an assumption as a matter of fact. But even if the notes were "received as genuine" by the assistant treasurer, that would not bind the Government of the United States in any manner if the notes were in fact not genuine.

To this defendants' counsel excepted.

Nevertheless, you have the right to take into consideration the facts proved on this subject, as to the manner in which these notes were received and handled at the subtreasury and the manipulation they underwent at Washington, upon the question as to whether the "C" notes are spurious or genuine, as that question may bear upon the other question as to whether they were or were not issued by the United States.

But I decline to charge as matter of fact that the notes "were received as genuine;" and even if it were so, it would not be of the slightest consequence in the case. Everything that took place is undoubtedly legitimate evidence, as bearing upon the question as to whether
169 the "C" notes are genuine notes, in the sense in which I have used the word "genuine"—that is, printed from the same plates from which notes issued by the United States were printed.

I am also requested, by the counsel for the defendants to charge you that if the defendants honestly believed the notes in question to be genuine obligations, issued by the United States, and so believing, and in good faith passed them to the assistant treasurer of the United States, and the latter, under the like belief, and in good faith received the notes and paid for them, the plaintiffs are not entitled to recover, although the notes may not have been genuine obligations issued by the United States. I decline so to charge.

If you shall find for the defendants on any one of the three propositions which I have stated, your verdict will be for the defendants—that is, if the Government has not satisfied you that the notes came from Jay Cooke & Co., you will find for the defendants; or if the Government has not satisfied you that it paid its money for the notes to Jay Cooke & Co., you will find for the defendants; or if you shall find that these "C" notes were issued by the United States, you will find for the defendants. You must find *by* a preponderance of evidence in favor of the plaintiffs on all three of the propositions to entitle them to your verdict. If you shall so find, your verdict will be for $23,630.88.

170 The court refused to charge the jury in the language of the fourth request, but modified the same, as appears in the charge; and the defendants except to such refusal, and also to the modification of such request made by the court in its charge, that by genuine obligations must be understood "obligations issued by the United States." The court refused to charge the jury as asked by the fifth request or otherwise in respect thereto than charged, and the defendants' counsel excepted to such refusal, and also to the modification of such request made by the court.

The court refused to charge in accordance with the sixth request, and the defendants' counsel excepted.

The jury thereupon found a verdict for the plaintiffs for the sum of twenty-three thousand six hundred and thirty dollars and eighty-eight cents; which verdict was duly recorded.

The plaintiffs then requested that their exceptions might be signed and sealed; and inasmuch as the matters herein set forth do not appear in the record, the same have been reduced to writing, and being found

to be correct, this bill of exceptions is allowed by the court, and directed to be filed as of the sixth day of December, one thousand eight hundred and seventy, before the jury left the bar.

SAMUEL BLATCHFORD. [L. S.]

171 District court of the United States, southern district of New York.

THE UNITED STATES OF AMERICA
vs.
JAY COOKE, WILLIAM G. MOREHEAD, HENRY D. COOKE, EDWARD DODGE, HARRIS C. FAHNESTOCK, and PITT COOKE.

Know all men by these presents, that we, James A. Garland and Charles Harvey, of the city of New York, are held and firmly bound unto the United States of America in the sum of one thousand dollars, to be paid to the said The United States of America; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this twenty-eighth day of November, one thousand eight hundred and seventy-one.

Whereas the above-named Jay Cooke, William G. Morehead, Henry D. Cooke, Edward Dodge, Harris C. Fahnestock, and Pitt Cooke
172 have prosecuted a writ of error to the circuit court of the United States for the southern district of New York, to reverse the judgment rendered in the above-entitled suit by the United States district court for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named Jay Cooke, William G. Morehead, Henry D. Cooke, Edward Dodge, Harris C. Fahnestock, and Pitt Cooke shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JAMES A. GARLAND. [L. S.]
CHAS. HARVEY. [L. S.]

Signed and sealed in presence of—
GEO. L. INGRAHAM.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

J. A. Garland, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and householder within the said district, and is worth the sum of two thousand dollars over and above all his debts and liabilities and exclusive of property exempt
173 by law from execution.

J. A. GARLAND.

Sworn to before me this 28th day of Nov., 1871.
[L. S.] GEO. L. INGRAHAM,
Notary Public, N. Y. Co.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Charles Harvey, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and householder within the

said district, and is worth the sum of two thousand dollars over all his debts and liabilities and exclusive of property exempt by law from execution.

CHAS. HARVEY.

Sworn to before me this 28th day of Nov., 1871.

GEO. L. INGRAHAM,
Notary Public, N. Y. C.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

I certify that on this 28th day of November, 1871, before me personally appeared the above-named James A. Garland and Charles
174 Harvey, to me known, and known to me to be the individuals described in and who executed the above undertaking, and severally acknowledged that they executed the same.

[L. S.] GEO. L. INGRAHAM,
Notary Public, N. Y. C.

The foregoing bond is approved as to form and amount, and the sufficiency of the sureties for the bringing of the writ, but not for a stay of execution on the judgment.

December 4, 1871.

(S'd) SAM'L BLATCHFORD,
District Judge.

(Endorsed:) U. S. district court, southern dist. of N. Y., 2—116—161. The United States of America agst. Jay Cooke and others. (Copy.) Bond under writ of error. Charles D. Burrill, defts'. atty.

Due and timely service of a copy of the within bond is hereby admitted.

Dec'r 5th, 1871.

Filed Dec'r 5, 1871.

175 United States district court.

THE UNITED STATES OF AMERICA
vs.
JAY COOKE, WILLIAM G. MOREHEAD, HENRY D. Cooke, Harris C. Fahnestock, Edward Dodge, and Pitt Cooke.

And now the said Jay Cooke, William G. Morehead, Henry D. Cooke, Harris C. Fahnestock, Edward Dodge, and Pitt Cooke, by Charles D. Burrill, their attorney, say that, in the record and proceedings aforesaid there is manifest error in this, to wit: That, by the record aforesaid, it appears that the judgement aforesaid given was given for the said United States of America against the said Jay Cooke, William G. Morehead, Henry D. Cooke, Harris C. Fahnestock, Edward Dodge, and Pitt Cooke; whereas, by the law of the land, the said judgement ought to have been given for the said Jay Cooke, William G. Morehead, Henry D. Cooke, Harris C. Fahnestock, Edward Dodge, and Pitt Cooke, against the said The United States of America. And the said Jay Cooke, William G. Morehead, Henry D. Cooke, Harris C. Fahnestock, Edward
176 Dodge, and Pitt Cooke pray that the judgment aforesaid may be

reversed, annulled, and altogether held for nothing; and that they may be restored to all things which they have lost by occasion of the said judgment.

CHARLES D. BURRILL,
Atty. for Plaintiff in Error.

(Endorsed:) United States district court. The United States of America *vs.* Jay Cooke, William G. Morehead, Henry D. Cooke, Harris C. Fahnestock, Edward Dodge, and Pitt Cooke. Assignment of error. Charles D. Burrill, attorney for plaintiff in error.

Lodged in office Dec'r 5, '71.

177 U. S. circuit court, southern district of New York.

THE UNITED STATES
vs.
JAY COOKE, WILLIAM G. MOREHEAD, HENRY D. COOKE, HARRIS C. FAHNESTOCK, EDWARD DODGE, and PITT COOKE. } In error.

And afterwards, to wit, on the first day of January, in October term, in the year of our Lord one thousand eight hundred and seventy, the said United States of America, by Noah Davis, their attorney, come here freely into court and say that there is no error, either in the record and proceedings aforesaid, or in the giving of the judgment aforesaid; and they pray that the said circuit court, before the judge thereof, now here, may proceed to examine, as well the record and proceedings aforesaid as the matters aforesaid above assigned for error; and that the judgment aforesaid, in form aforesaid given, may in all things be affirmed, &c.

NOAH DAVIS,
U. S. Atty.

178 (Endorsed:) U. S. circuit court. The United States vs. Jay Cooke et al. Plff.'s joinder in error. Noah Davis, U. S. atty. Filed January 29, 1872.

179 And now at this day, to wit, on the first Monday of April, in the year one thousand eight hundred and seventy-three, before the said judges of the said circuit court of the United States, now here, come the said Jay Cooke et als., by Charles D. Burrill, their attorney, and say that in giving the judgment aforesaid there is manifest error in this, to wit: That, by the record aforesaid it appears that the judgment aforesaid, in the form aforesaid given, for the said The United States of America against the said Jay Cooke et als., whereas, by the law of the land, the said judgment ought to have been given for the said Jay Cooke et als., and against the said The United States of America.

And the said Jay Cooke et als. pray that the judgment aforesaid for the errors aforesaid may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of the said judgment, &c.

And hereupon the said The United States of America, by George Bliss, their attorney, freely come here into court and say that there is no error in giving the judgment aforesaid, and they pray that the said cir-
180 cuit court of the United States, before the aforesaid judges thereof, now here, may proceed to examine matters aforesaid, above as-

signed for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

But, because the said court before the aforesaid judges thereof, now here, are not yet advised what judgment to give of and upon the premises, a day is given to the parties aforesaid before the said judges, at the United States court-building, in the city of New York, in said southern district, in the second circuit, on the 13th day of May, one thousand eight hundred and seventy-four, as yet of April term, in the year one thousand eight hundred and seventy-four, to hear judgment thereon, for that the said court now here are not yet advised, &c.

At which day, before the judges of the circuit court of the United States aforesaid, at the United States court-building, in the city of New York, in the said southern district, come the parties aforesaid, by their attorneys aforesaid; whereupon as well the record and proceedings aforesaid and the judgment given in form aforesaid, as the matters
181 aforesaid by the said Jay Cooke et als., above for error assigned, being seen and by the said circuit court, before the aforesaid judges thereof, now here, fully seen and understood, and mature deliberation being thereupon had, it appears to the said court, before the aforesaid judges thereof, now here, that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid, but that the said judgment should be in all things affirmed.

Therefore it is considered that the judgment aforesaid in form aforesaid given, be in all things affirmed and stand in full force and effect, the several matters above for error assigned in any wise notwithstanding. And it is further considered that the said The United States of America do recover against the said Jay Cooke, William G. Morehead, Henry D. Cooke, Harris C. Fahnestock, Edward Dodge, and Pitt Cooke, as well their damages, costs, and charges adjudged to them by the said judgment aforesaid, as also four thousand five hundred eighty-
182 four dollars and forty-seven cents, adjudged to them by the said circuit court before the aforesaid judges thereof, now here, for their damages, costs, and charges which they have sustained and expended, by reason of the delay of execution of the judgment aforesaid, and on pretense of the prosecution of the said writ of error, which said damages, costs, and charges in the whole amount to thirty thousand one hundred sixty-five dollars and three cents, and that the said The United States of America have execution thereof, &c. And the said Jay Cooke, William G. Morehead, Henry D. Cooke, Harris C. Fahnstock, Edward Dodge, and Pitt Cooke, in mercy, &c.

Judgment signed this 16th day of May, 1874.

R. E. STILWELL,
Deputy-Clerk.

(Endorsed:) U. S. circuit court so. dist. of New York. Jay Cooke et als., plaintiffs in error, vs. The United States, defts. in error. Judgment record. George Bliss, U. S. atty.

Judgt. below, $25,580.56; costs & interests, 4,584.47—$30,165.03.
Filed May 18, 1874.

183 U. S. Supreme Court.

JAY COOKE ET. ALS., PLAINTIFFS IN ERROR,
vs.
THE UNITED STATES.

We consent that the clerk of the circuit court include in his re-

turn to the Supreme Court copies of the exhibits used on the trial of this cause in the district court, so far as the same are printed in the case used in the circuit court.

J. E. BURRILL,
Atty. for Plff. in Error.
GEORGE BLISS.

SEPTEMBER 18, 1874.

Ordered accordingly.

SAML. BLATCHFORD.

SEPT. 18, 1874.

(Endorsed:) U. S. Supreme Court. Jay Cooke et al., plff. in error, vs. The United States. Consent for return of exhibits. J. E. Burrill, atty. for plff. in error. Filed Sept. 18, 1874.

184) *Exhibits of defendants in error.*

No. 700.] EXHIBIT A, No. 1; (folio 198.)

Sold Hon. H. H. Van Dyck, assistant treasurer United States at New York, by Jay Cooke & Co., corner Wall and Nassau streets:

SEPTEMBER 20.

400,000.	June 7, $\frac{3}{10}$, 107		$428,000
	97 days,		7,760
100,000.	July, " 107		107,000
	67 days,		1,340
			$544,100

No. 700—A.] EXHIBIT D, No. 1; (folio 216.)

U. S. TREASURY,
New York, Sept. 20th, 1867.

To the paying-teller:

Pay to Jay Cooke & Co., or bearer, five hundred and thirty-five thousand dollars, in U. S. notes, on account of 7-30 notes.

J. F. MISSEN.

$535,000.

☞ This memorandum-check must be collected on the day paid.

(Across the face:) Paid Sept. 20, 1867. (Endorsed) C. C., issued.

185) No. 700—B.] EXHIBIT D, No. 1; (folio 216.)

U. S. TREASURY,
New York, Sept. 20th, 1867.

To the paying-teller:

Pay to Jay Cooke & Co., or bearer, nine thousand one hundred dollars in U. S. notes, on account of 7-30 notes.

J. F. MISSEN.

$9,100.

☞ This memorandum-check must be collected on the day issued.

(Across the face:) Paid Sept. 21, 1867. (Endorsed:) A. Laney.

EXHIBIT (——.)

List of counterfeit 7-30 notes, for one thousand dollars ($1,000) each, dated June 15, 1865, returned to the assistant treasurer U. S., at New York, October 12, 1867, with instructions to call upon Messrs. Jay Cooke & Co. to refund, said notes having been received from them.

Number.	Letter.	Case.	When forwarded.
68466	B	355 B	Sept. 28, 1867.
68649	A	"	"
140121	"	"	"
160236	B	"	"
160452	"	"	"
160484	"	"	"
180105	A	"	"
180165	"	"	"
68537	"	356 B	Sept. 30, 1867.
160130	B	"	"
68761	A	"	"
160182	B	"	"
68715	A	359 B	October 4, 1867.
180107	"	"	"
186 140209	A	363 B	October 7, 1867.
68735	"	"	"
180133	"	366 B	October 9, 1867.
68446	B	349 B	Sept. 21, 1867.

EXHIBIT (——.)

Counterfeit 7-30 notes, of $1,000 each, dated June 15, 1865, presented Jay Cooke & Co., New York.

Number.	Letter.	Case.	When forwarded.
68446	B	349 B	Sept. 21, 1867.
68466	"	355 B	" 28, "
68537	A	356 B	" 30, "
68649	"	355 B	" 28, "
68715	"	359 B	October 4, 1867.
68735	"	363 B	" 7, "
68761	"	356 B	Sept. 30, 1867.
140121	"	355 B	" 28, "
140209	"	363 B	October 7, 1867.
160130	B	356 B	Sept. 30, 1867.
160182	"	"	" " "
160236	"	355 B	" 28, "
160452	"	"	" " "
160484	"	"	" " "
180105	A	"	" " "
180107	"	359 B	October 4, 1867.
180133	"	366 B	" 9, "
180165	"	355 B	Sept. 28, 1867.

C 1.

[Interest twenty cents per day.]

Three years after date [68446

1,000] THE UNITED STATES [1,000

B

Promise to pay to the order of ——— ——— [SEAL]

ONE THOUSAND DOLLARS

With interest at $7\frac{3}{10}$ per cent., payable semi-annually in lawful money.

1,000] [1,000

WASHINGTON, *June* 15, 1865.

S. B. COLBY, F. E. SPINNER,

Register of the Treasury. *Treasurer United States.*

[VIGNETTE.]

TREASURY DEPARTMENT.

B. 68446

[Act of March 3d, 1865.]

5 coupons attached. Last 6 months' interest payable with note. Prior installments payable only on presentation of coupons therefor.

$36\frac{50}{100}$ Pay bearer $36\frac{50}{100}$ Dec'r 15th, 1867, for 5th six months' interest on $1,000 U. S. Treasury note No. 68446.

F. E. SPINNER, *Treasurer U. S.* $36\frac{50}{100}$

NOTE.—Canceled by punching three holes in each of the signatures of the Treasurer and Register, three in the coupon, and two in the marginal note. The figure 5 is stamped on the coupon.

(On the back:)

1,000

Pay to bearer.

At maturity convertible, at the option of the holder, into bonds redeemable at the pleasure of the Government at any time after five years, and payable twenty years from June 15th, 1868, with interest at six per cent. per annum, payable semi-annually in COIN.

1,000

NOTE.—Eleven marks of the punch visible on back.

K 1.

[Interest twenty cents per day.]

Three years after date [68446

1,000] THE UNITED STATES [1,000 B

Promise to pay to the order of ——— ———

[SEAL]

ONE THOUSAND DOLLARS

With interest at $7\frac{3}{10}$ per cent., payable semi-annually in lawful money.

1,000] [1,000

WASHINGTON, *June 15th*, 1865.

S. B. COLBY, *Register of the Treasury.* F. E. SPINNER, *Treasurer United States.*

[VIGNETTE.]

Treasury Department.

B. 68446

[Act of March 3d, 1865.]

5 coupons attached. Last 6 months' interest payable with note. Prior installments payable only on presentation of coupons therefor.

NOTE.—Eight holes punched in signatures of Treasurer and Register.

(On the back:)

1,000

Pay to [bearer erased] Secretary of the Treasury for conversion.

JOHN J. BROWER, *Treasurer.*

At maturity convertible, at the option of the holder, into bonds redeemable at the pleasure of the Government at any time after five years, and payable twenty years from June 15th, 1868, with interest at six per cent. per annum, payable semi-annually in COIN.

'000'1

NOTE.—Ten punch-marks visible on back.

EXHIBIT E, (page 62.)

Indorsed "Abstract from account-book of purchases of United States 7-30 notes, assistant treasurer's office, New York.

Date of acceptance.	No.	Of whom purchased.	June.	July.	Interest on June notes.	Interest on July notes.	Rate of premium.	Amount of premium.		Total.
1867.										
Sept. 20	700	Jay Cooke & Co....	$400,000	$100,000	$7,760	$1,340	7%	$35,000 00	.....	$544,100 00
" 21	713	....do	300,000	200,000	5,880	2,720	"	"	$533,600	543,600 00
"	721	....do	200,000	300,000	3,920	4,080	"	"	.....	543,000 00
" 23	728	....do	335,000	165,000	6,700	2,310	"	"	540,010	544,010 00
" 24	758	....do	350,000	150,000	7,140	2,160	"	"	544,310	544,300 00
" 26	761	....do	"	"	7,210	2,190	"	"	.....	544,400 00
"	768	....do	335,000	165,000	6,901	2,409	"	"	.....	544,310 00
" 27	779	....do	350,000	150,000	7,280	2,220	"	"	.....	544,500 00
" 30	791	....do	500,000	.....	10,700	.....	106¾	33,750 00	.....	544,450 00
"	795	....do	250,000	250,000	5,350	3,850	"	"	.....	542,950 00
Octo. 3	803	....do	"	"	5,500	4,000	"	"	.....	543,250 00
" 4	810	....do	330,000	170,000	7,326	2,754	106¼	33,125 00	.....	543,205 00
" 5	824	....do	380,000	120,000	8,512	1,968	{250–6¼ 250–6½}	32,812 50	.....	543,292 50
" 8	830	....do	250,000	250,000	5,750	4,250	106	30,000 00	.....	540,000 00

192 EXHIBIT F, No. 1.

UNITED STATES TREASURY,
New York, Sept. 21, 1867.

Statement of United States 7 3-10 *notes purchased.*

Bought of—			
	Dabney, Morgan & Co.,		
8,000.	June issue, at 107	$8,560 00	
	97 days' interest	155 20	
			$8,715 20
	Stamford National Bank,		
19,000.	June issue, at 107	20,330 00	
	97 days' interest	368 60	
1,400.	July issue, at 107	1,498 00	
	67 days' interest	18 76	
			22,215 36
	Jay Cooke & Co.,		
400,000.	June issue, at 107	428,000 00	
	97 days' interest	7,760 00	
100,000.	July issue, at 107	107,000 00	
	67 days' interest	1,340 00	
300,000.	June issue, at 107	321,000 00	
	98 days' interest	5,880 00	
200,000.	July issue, at 107	214,000 00	
	68 days' interest	2,720 00	
			1,087,700 00
	Smith, Randolph & Co.,		
250,000.	June issue, at 107	267,500 00	
	97 days' interest	4,850 00	
			272,350 00
	Edward Sweet & Co.,		
78,000.	June issue, at 107	83,460 00	
	78 days' interest	1,513 20	
52,000.	July issue, at 107	55,640 00	
	67 days' interest	696 80	
			141,310 00
	A. S. Foster,		
4,000.	June issue, at 107	4,280 00	
	97 days' interest	77 60	
			4,357 60
1,412,400.	Carried forward		1,536,648 16

193 EXHIBIT F, No. 2.

UNITED STATES TREASURY,
New York, Sept. 21, 1867.

Statement of United States 7 3-10 *notes purchased.*

1,412,400	Brought forward		$1,536,648 16
	Maxwell & Graves,		
40,000.	June issue, at 107	42,800 00	
	97 days' interest	776 00	

10,000.	July issue, at 107	10,700 00	
	67 days' interest	134 00	
			54,410,00
	Turner Brothers,		
113,050.	June issue, at 107	120,963 50	
	97 days' interest	2,193 17	
13,550.	July issue, at 107	14,498 50	
	67 days' interest	181 57	
			137,836 74
	Frank & Gans,		
315,750.	June issue, at 107	337,852 50	
	97 days' interest	6,125 55	
11,850.	July issue, at 107	12,679 50	
	67 days' interest	158 79	
			356,816 34
	O. H. Cox,		
50,000.	June issue, at 107	53,500 00	
	97 days' interest	970 00	
"	July issue, at 107	53,500 00	
	68 days' interest	670 00	
			108,640 00
	Fisk & Hatch,		
250,000.	July issue, at 107	267,500 00	
	97 days' interest	3,350 00	
			270,850 00
	E. Caldwell,		
9,000.	June issue, at 107	9,630 00	
	97 days' interest	174 60	
			9,804 60
2,275,600	Carried forward		$2,476,005 80

194 EXHIBIT F, No. 3.

UNITED STATES TREASURY,
New York, Sept. 21, 1867.

Statement of United States 7 3-10 *notes purchased.*

2,275,600.	Brought forward		$2,475,005 84
	Vermilye & Co.,		
200,000.	June issue, at 107	214,000 00	
	67 days' interest	3,880 00	
			217,880 00
	Henry A. Heiser's Sons,		
92,500.	June issue, at 107	98,975 00	
	97 days' interest	1,794 00	
18,500.	July issue, at 107	19,795 00	
	67 days' interest	247 90	
100,000.	June issue, at 107	107,000 00	
	97 days' interest	1,940 00	
			229,752 40
2,686,600.			$2,922,638 24

EXHIBIT L, No. 8.

JUNE 5, 1865.

SIR: I have received your letter of June 5, together with the following Treasury-notes, payable to, viz:

No.		to No.		i. e.,		of	$5,000	each,	$	
"	158794	"	162784	"	3991	"	1,000	"		3,991,000
"	122341	"	122540	"	200	"	500	"		100,000
"	312118	"	312126	"	509	"	100	"		900
"		"		"	1000	"	50	"		
Amounting to										$4,091,900

Issued on No. 506, for certificate of deposit of Jay Cooke for that amount, in favor of Jay Cooke & Co.

Yours, respectfully,
(Signed) JAY COOKE & CO.
WM. M. TENNEY.

Hon. HUGH MCCULLOCH,
Secretary of the Treasury, Washington, D. C.
1200.

195 EXHIBIT L, No. 9.

BOSTON, *May 17th*, 1865.

SIR: I have received your letter of May 15, together with the following Treasury-notes, payable to, viz:

No.	3328	to No.	51	i. e.,	24	of $5,000	each		$120,000
"	139948	"	140247	"	300	" 1,000	"		300,000
"	128617	"	816	"	200	" 500	"		100,000
"	266686	"	267485	"	800	" 100	"		80,000
"		"		"		" 50	"		
Amounting to									$600,000

Issued on No. 439, for certificate of deposit of Jay Cooke for that amount, in favor of Jay Cooke & Co.

Yours, respectfully,
(Signed) E. C. BROOKS, *A. C.*

Hon. HUGH MCCULLOCH,
Secretary of the Treasury, Washington, D. C.
969.

EXHIBIT L, No. 10.

1866.

SIR: I have received your letter of December 19, together with the following Treasury-notes, payable to order of David Hays, viz:

No.		to No.		i. e,		of $5,000	each		
"	180157	"	180185	"	29	" 1,000	"		$29,000
"		"		"		" 500	"		
"	339585	"	339594	"	10	" 100	"		1,000
"		"		"		" 50	"		
Amounting to									$30,000

196 Issued on No. 312, for certificate of deposit of assistant treasurer United States for that amount, in favor of myself, San Francisco, Cal.; also, draft of Treasurer United States, on assistant treasurer United States, San Francisco, Cal., $720,000.

Yours, respectfully,

(Signed) DAVID HAYS.

Hon. HUGH MCCULLOCH,
Secretary of the Treasury, Washington, D. C.

1287. Second series.

197 EXHIBIT M 7, (Second series.)

PHILADELPHIA, *December 11th*, 1865.

Hon. W. P. FESSENDEN, *Secretary of Treasury:*

SIR: On certificate of deposit, issued by Jay Cooke, subscription-agent, to Jay Cooke & Co., No. 518, date July 1, issue 7-30 loan, as follows:

(Signed) JAY COOKE & CO.
WM. M. TENNEY.

Received Decem. 11th, 1865. Loan-branch.

Date of subscription.	Name.	Address.	Denominations.					Amount.	Ack'-ledged.
			$50.	$100.	$500.	$1,000	$5,000.		
	Jay Cooke & Co.	Philadelphia.	.....	.....	.....	179,699 180,123 425	.....	$425,000	$11,219

EXHIBIT M 9.

PHILADELPHIA, *May 29th*, 1865.

Hon. W. P. FESSENDEN, *Secretary of Treasury:*

SIR: On certificate of deposit, issued by Jay Cooke, subscription-agent, to Jay Cooke & Co., No. 506, date May 13, issue 7-30 loan, as follows:

Amount principal	$4,091,900 00
Interest	27,006 54
Total	$4,064,893 46

(Signed) JAY COOKE.

Received May 31, 1865. Loan-branch, Secretary's Office.

Date of subscription.	Name.	Address.	Denominations.					Amount.	Acknowledged.
			$50.	$100.	$500.	$1,000.	$5,000.		
	Jay Cooke & Co.	Washington	.... 163,444 164,443	312,118 312,139 312,145 312,644	....	158,794 162,784			
			1,000	509	.....	3,991	.....	$4,091,900	

198 [*Letter from page* 768 *of Exhibit J* 3.]

OCT. 14*th*, 1867.

Messrs. MAXWELL & GRAVES:

GENTS: We are informed by the Treasury Department that the following-described 7-30 Treasury-note, 2d series, No. 68446, of denomination of one thousand dollars, received from you on the 13th day of September, 1867, and by us forwarded to the Department, is a counterfeit; and we hereby notify you that we hold you liable to us upon the said note, to the full amount represented by the same, for all loss or damages which we may sustain by reason of any claim or demand which may be made upon us for the substitution of a genuine note to replace the one reported as spurious.

Yours, truly,

JAY COOKE & CO.

[*Letter from page* 769 *of Exhibit J* 3.]

OCT. 14*th*, 1867.

Messrs. DREXEL, WINTHROP & CO.:

GENTS: We are informed by the Treasury Department that the following-described 7-30 Treasury-note, 2d series, No. 180133, of denomination of one thousand dollars, received from you on the 9th day of October, 1867, and by us forwarded to the Department, is a counterfeit; and we hereby notify you that we hold you liable to us, upon the said note, to the full amount represented by the same, for all loss or
199 damages which we may sustain, by reason of any claim or demand which may be made upon us for the substitution of a genuine note to replace the one reported as spurious.

Yours, truly,

JAY COOKE & CO.

[*Letter from page* 770 *of Exhibit J* 3.]

OCT. 14*th*, 1867.

Messrs. RODMAN, FISK & CO.:

GENTS: We are informed by the Treasury Department that the following-described 7-30 Treasury-notes, 2d series, No. 140209, 68735, of denomination of one thousand dollars, received from you on the 7th day of October, 1867, and by us forwarded to the Department, are counterfeit; and we hereby notify you that we hold you liable to us, upon the said notes, to the full amount represented by the same for all loss or damages which we may sustain by reason of any claim or demand which may be made upon us for the substitution of genuine notes to replace those reported as spurious.

Yours, truly,

JAY COOKE & CO.

[*Letter from page* 777 *of Exhibit J* 3.]

OCT. 15*th*, 1867.

Messers. ESTABROOK & SMITH, *Worcester, Mass.:*

GENTS: Your favor of the 14th inst. received. We do not know the numbers of any other of the 7-30's, so-called counterfeit, than

200 those which happened to be presented here. Our circular herein gives the points of difference. We know of no irregularities, except in the 1000's, and are not yet aware of the steps that may be taken by the Secretary of the Treasury.

Yours, truly,

JAY COOKE & CO.

[*Letter from page* 829, *of Exhibit J* 3.]

OCT. 18th, 1867.

Messrs. DREXEL, WINTHROP & Co.:

GENTLEMEN: We have received, from the Department at Washington, an official notification that the 7.30 treasury-note, 2d series, No. 180,133, of denomination of one thousand dollars, received by us from you on the 5th day of October, 1867, (not 9th day of October, as heretofore advised,) is counterfeit and spurious; also a demand upon us by the Department for the substitution of a genuine note to replace the one alleged to be spurious. As advised in ours of 14th inst., you will please take notice that we hold you liable to us for all loss and damage which we may sustain by reason of such claim or demand aforesaid.

Yours, truly,

JAY COOKE & CO.

[*Letter from page* 830, *of Exhibit J* 3.]

OCT. 18th, 1867.

Messrs. BAKER & KITCHEN:

GENTLEMEN: We have received, from the Department at Wash-
201 ington, an official notification that the 7.30 note on the Treasury, 2d series, No. 68,715, of the denomination of one thousand dollars, received by us from you on the 28th day of September, 1867, is counterfeit and spurious; also, a demand upon us by the Department for the substitution of a genuine note to replace the one alleged to be spurious. You will, therefore, please take notice that we hold you liable to us, upon the said note, to the full amount represented by the same, for all loss and damages which we may sustain by reason of any claim or demand which may be made upon us for the substitution of a genuine note to replace the one reported as spurious.

Yours, truly,

JAY COOKE & CO.

[*Letter from page* 831, *of Exhibit J* 3.]

OCT. 11th, 1867.

Messrs. MAXWELL & GRAVES:

GENTLEMEN: We have received, from the Department at Washington, an official notification that the 7.30 treasury-note, 2d series, No. 180,107, of denomination of one thousand dollars, received by us from you, on the 2d day of October, 1867, is counterfeit and spurious; also, a demand upon us for the substitution of a genuine note to replace the one alleged to be counterfeit.

Yours, truly,

JAY COOKE & CO.

202 [*Letter from page* 832, *of Exhibit J* 3.]

OCT. 18th, 1867.

Messrs. RODMAN, FISK & Co.:

GENTLEMEN: We have received, from the Department at Washington, an official notification that 7.30 treasury-notes, 2d series, Nos. 140,209, 68,735, of denomination of one thousand dollars each, received by us from you, on the 7th day of October, 1867, are counterfeit and spurious; also a demand upon us by the Department for the substitution of genuine notes to replace those alleged to be spurious.

Yours, truly,

JAY COOKE & CO.

[*Letter from page* 833, *of Exhibit J* 3.]

OCT. 18th, 1867.

Messrs. JAMES T. BRADY & Co., *Pittsburgh:*

GENTLEMEN: We have received, from the Department at Washington, an official notification that 7.30 treasury-notes, 2d series, Nos. 68,649, 140,121, 160,236, 180,165, 160,452, of the denomination of one thousand dollars each, received by us from you, on the 27th day of September, 1867, are counterfeit and spurious; also a demand upon us by the Department for the substitution of genuine notes to replace those alleged to be counterfeit.

Yours, truly,

JAY COOKE & CO.

203 [*Letter from page* 834, *of Exhibit J* 3.]

OCT. 18th, 1867.

WILLIAM RIDGLEY, Esq., Cashier:

DEAR SIR: We have received, from the Department at Washington, an official notification that 7.30 treasury-notes, 2d series, Nos. 68,466, 180,105, 160,484, of denomination of one thousand dollars each, received by us from you on the 27th of September, 1867, are counterfeit and spurious; also a demand upon us by the Department to replace those alleged to be spurious.

Yours, truly,

JAY COOKE & CO.

[*Letter from page* 837, *of Exhibit J* 3.]

OCT. 18th, 1867.

Messrs. MAXWELL & GRAVES:

GENTLEMEN: We have received, from the Department at Washington, an official notification that 7.30 treasury-note, 2d series, No. 68,446, of denomination of one thousand dollars, received by us from you on the 21st day of September, 1867, is counterfeit and spurious; also a demand upon us by the Department for the substitution of a genuine note to replace the one alleged to be spurious.

Yours, truly,

JAY COOKE & CO.

204 ADAM S. PRATT.—Deposition as read at folio 496 of the case:

Q. Please state your age, residence, and occupation.

A. I am 52 years of age; my residence is Washington; and business, that of a national-bank and insurance agent.

Q. Describe briefly the character of your agency.

A. I witness the destruction of worn-out bills of banks deposited in the Treasury, and appraise their securities.

Q. Were you at any time connected with the Treasury Department?

A. Yes, sir.

Q. During what time and in what capacity?

A. From 1861 to 1867. Part of the time as clerk in the note division, Secretary's Office, and the latter part of the time as chief of the division.

Q. What were the general duties of that division?

A. They were to receive the halves of mutilated United States notes and fractional currency, the lower halves, and to have them counted and destroyed; also, to register the issue and redemption of all interest-bearing notes except 7.30s, and when they were redeemed to count the lower halves, and witness the destruction of the same.

Q. You speak of halves of notes; who had charge of the remaining halves of the same notes?

A. The Register's Office.

Q. Were you at any time appointed a member of a committee by the Secretary of the Treasury, for the purpose of examining the operations of the Printing Department?

A. Yes, sir.

Q. Do you remember the date of your appointment?

A. I cannot now call it exactly to mind.

Q. Who were your associates on that committee?

205 A. There was Mr. Moore of the Register's Office, Mr. Lyman of the Treasurer's Office, and Mr. Marsh of the Secretary's Office.

Q. Did you make that examination?

A. We did.

Q. How extensive or thorough was it?

A. It was as extensive and thorough as it was in our power to make it.

Q. State whether you examined all those portions of the Department in which the manufacture of moneys or securities was carried on.

A. We did.

Q. State whether you examined the accounts of the various departments, from the commencement of the organization of the printing division down to the time of your examination.

A. We did.

Q. State whether or not the books, papers, and vouchers relating to those accounts were furnished to and investigated by the committee.

A. They were.

Q. How long a time was employed in that investigation?

A. I cannot state exactly now; a number of months; because we had to carry on the work of our own divisions while we made these examinations. There was no one appointed to fill our places while we were making the examinations.

Q. When you commenced the examination, was the work of that department carried on, or was it stopped until you had taken an account of the work on hand in process of manufacture?

A. The work was stopped until we got through any division that we might at the time be examining.

Q. Then it was suffered to go on?

206 A. Yes, sir; so far as the necessities of the Government required; that is, to the best of my recollection.

Q. State whether, after you completed the examination, you made a report in writing to the Secretary of the results of the examination.

A. The committee did so.

Q. Was that report signed by the committee?
A. It was.
Q. To what Secretary was it presented?
A. Hon. Hugh McCulloch.
Q. Where is that report now?
A. That I cannot tell; I have never seen it since.
Q. Please state whether the facts set forth in that report were true, as you found them to exist upon that examination.
A. They were.
Q. All of them?
A. All of them, to the best of my knowledge and belief.
Q. Please look at the document now shown to you, and entitled "Report of Committee, No. 273, 40th Congress, 3d Session," from pages 107 to 128 inclusive, and say whether that report is a copy of the report made by the committee of which you were a member to the Secretary of the Treasury.
A. I cannot tell, never having examined this report with the original, never having seen this printed report until yesterday, for a moment, in this room.
Q. What is your best opinion on the subject, whether that is a copy of the report or not?
A. I will state that I did see one copy of this report in one of the offices, but I never examined it.
Q. The question was then repeated.
A. To the best of my opinion, I should say it was a copy of that report; whether it is a full copy I cannot say, of course, without examination.

Portions of the ten paragraphs of the report mentioned in the above testimony offered to be read at folio 497 of case:

207 1. The custodian keeps a record of deliveries of dies, rolls, or plates to the engravers and transferrers, and of the delivery of plates to the plate printer, and of the return of such dies, rolls, or plates. This record appears to be correctly kept, and to be accurate in the details.

2. The committee found in the hands of the custodian and of the superintendent of the sealers a large number of United States Treasury seals, of which there was only a partial record.

3. There was in the custodian's hands 158 seals of different sizes, part of these being cancelled. The record on the custodian's books in regard to these seals was very imperfect, and did not correspond with the number of seals on hand.

4. In the sealing-division were found 165 seals of various sizes, of which the sealer had no record whatever, and the number of which was not known until a count had been made at the request of the committee.

5. In this division the seals were kept in forms ready for printing, in racks not enclosed in drawers, and in tin cups.

6. The custodian and the sealer both state that seals have been brought to them that had been picked up by different persons at different times in other rooms, and no account of the number on hand, or which should have been on hand, could be given by either the custodian or the sealer.

7. The room of the superintendent of sealers being left unlocked, is accessible at all times to any one gaining admittance to the division, and there is therefore no security against the taking of impressions or against the abstraction of the seals.

8. In the vault of the custodian were found a number of stereotype and electrotype plates used for printing the backs of bonds and otherwise, a quantity of numerals and ovals used in printing fractional currency and other miscellaneous work of which the custodian had no record, and which he states were not regularly in his charge, but merely laid away by him for safe-keeping when brought to him.

9. At the request of the committee, a schedule of these articles was made and verified, which schedule also includes the cancelled rolls on hand, and a number of counterfeit plates of Government issues deposited in the vault of the Government detectives.

10. The schedule is contained in the general inventory appended to this report, in which inventory will also be found a list of the blank plates and rolls on hand March 18th, 1867. This blank stock is kept in wooden closets in the transfer-room, with no other security than an ordinary lock.

Circuit court of the United States for the southern district of New York.

Opinion of Judge Woodruff.

JAY COOKE ET AL., PLFFS. IN ERROR,
vs.
THE UNITED STATES OF AMERICA, DEFT. IN error.

On the 3d of March, 1865, Congress authorized the Secretary of the Treasury to borrow, on the credit of the United States, not exceeding six hundred millions of dollars, and to issue therefor bonds or Treasury-notes of the United States, bearing interest not exceeding seven and three-tenths per centum per annum, payable semi-annually. (13 Statutes at Large, 468.) Such notes were not made a legal tender. Under this act Treasury-notes to a large amount were issued by the Secretary of the Treasury, payable three years after date.

On the 12th of August, 1866, Congress, by another act, authorized the Secretary of the Treasury, at his discretion, to receive any Treasury-notes or other obligations issued under any act of Congress, whether bearing interest or not, in exchange for any description of bonds authorized by the previous act of March 3d, 1865, and also to dispose of any description of bonds authorized by such previous act, * * * for lawful money of the United States or for any Treasury-notes * * * which have been, or which may be, issued under any act of Congress, the proceeds thereof to be used only for retiring Treasury-notes or other obligations issued under any act of Congress, but nothing herein contained shall be construed to authorize any increase of the public debt. (14 Statutes at Large, 31.)

On each of several days, from and including September 20th and October 8th, 1867, the defendants (the plaintiffs in error) presented to the assistant treasurer of the United States, at the city of New York, large amounts of Treasury-notes purporting to be issued under the act of 1865, dated June 15th, 1865, and payable three years after date, and, in the language of the then assistant treasurer, examined as a witness in this case, "he purchased the amount and description of notes at the prices and premium mentioned" in bills of sale therefor made by the defendants, (plaintiffs in error,) which, together with the notes which

they purported to include, were purchased and paid for with the money of the United States by such assistant treasurer, and at a premium above the face thereof, shown by the said bills of sale. Such bills of sale were in the following form:

"Sold Hon. H. H. Van Dyck, assistant treasurer of the United States, No. 700, by Jay Cooke & Co., corner of Wall and Nassau streets, September 20:

$400,000, June 7 3/10,	107	$428,000
	97 days	7,760
$100,000, July "	107	107,000
	67 days	1,340
		$544,100

211 Upon the back of the Treasury-notes the defendants, by a stamp, which, for their convenience, they were permitted to employ in lieu of their written signature, before such delivery, printed on the back of each the words, "Pay to the Secretary of the Treasury for redemption, Jay Cooke & Co."

By the form of the transactions, therefore, the defendants (plaintiffs in error) proposed to sell the several notes, and by endorsement to authorize the Secretary of the Treasury to receive them for redemption at the Treasury.

This appears to have been the mode which, in these cases at least, the Secretary adopted for retiring Treasury-notes under the act of 1866, before mentioned.

The notes thus received from the defendants were forwarded by the assistant treasurer to the Secretary of the Treasury at Washington, and, on examination there, eighteen thereof, of one thousand dollars each, were pronounced not to be genuine Treasury-notes issued by the Government of the United States, and were thereupon returned to the assistant treasurer at New York, who, on the 13th of October, 1867, notified the defendants that they were counterfeit, and required them to refund the money paid for them or substitute other notes for them. The defendants below, neglecting or refusing to do either, this action was brought in the district court on or prior to the 4th of March, 1868, to recover back the money, and on the trial hereof the United States had a verdict for the amount paid to the defendants for such eighteen notes, with interest thereon, $23,630.88. Judgment being entered, the defendants below have brought this writ of error to review decisions made on the trial and portions of the charge of the judge to the jury, which appear in the bill of exceptions made for that purpose.

The declaration herein contained special counts describing the cause of action as an indebtedness by the defendants to the plaintiff for
212 money had and received by the defendants to and for the use of the United States, and of their property, which money was obtained by the defendants upon occasion of their delivering to the plaintiff of what purported to be obligations of the United States known as seven-thirty treasury-notes, which were by the defendants when they delivered them to the officer of the subtreasury, professed to be, and by the plaintiffs and their officer aforesaid were then supposed to be, valid, genuine notes, and by the defendants' representations and inducements the same were received as valid, genuine notes by the plaintiffs and their officer aforesaid, at the subtreasury of the United States aforesaid, at the city of New York.

That the said notes were, in fact, counterfeit, and had never been executed or issued by the United States of America, their officers or agents, but had been forged and falsely made and uttered, and were no obligations of the United States aforesaid, and were by their officers aforesaid received as aforesaid under the belief created by the representations and inducements aforesaid that the notes were good, and formed a valuable and adequate consideration for the money received by the defendants, which money was retained by the defendants from the plaintiffs after discovery that the said notes were counterfeit, whereof prompt notice was given to the defendants. That being so indebted, the defendants promised, &c. Other counts were also contained in the declaration in general indebitatus assumpsit, for money had and received by the defendants to and for the use of the plaintiffs.

To the declaration the defendants pleaded non assumpsit only.

The proofs on the trial were mainly addressed to the enquiries whether the notes in question were a part of the regular series of notes printed at the Treasury of the United States under the said act of 1865, and issued by the Secretary of the Treasury; and whether the said
213 notes were wholly spurious and counterfeit, not made nor printed upon any plates made or engraved at the Treasury; and further, whether the said notes were surreptitiously and fraudulently printed from the plates and dies in the Treasury Department, or, being in fact lawfully printed, were fraudulently, by some means not disclosed, put in circulation as Treasury-notes.

On these last-named questions there was no evidence whatever of such fraudulent or surreptitious printing or of such fraudulent putting in circulation of notes lawfully printed, except so far as the evidence introduced on the part of the defendants to show that these notes might have been printed from the lawfully-made plates at the Treasury, in connection with the evidence that the said notes were not a part of the series of Treasury-notes lawfully issued by the Secretary of the Treasury, might create a suspicion that the Government plates were used by some one and by some means to make the notes is question.

The evidence that the notes were not printed from the Government plates, but were wholly counterfeit and spurious, was very strong, and the conflict of evidence was so slight, that, had the case gone to the jury upon that sole question, it seems hardly possible that the jury could have hesitated to find them wholly false, forged, and counterfeit. Indeed, I think a finding that they were printed from the Government plates, and were sealed with the genuine seal of the Treasury, would have been so against the weight of the evidence, that it must have been set aside, if the jury had rendered such a verdict.

But, as will be hereinafter more fully stated, the case did not go to the jury on that sole question, as the test of the right to recover, but on the question whether the notes in controversy were in fact issued by the Secretary of the Treasury; the question whether or not they were printed from the Government plates and actually sealed with the Treasury seal, being regarded by the court as material only from its incidental
214 bearing on the question whether they were in fact issued by the Secretary of the Treasury.

A distinction is therefore raised between notes which, being printed from the Government plates, and sealed with the seal of the Treasury as evidence of lawful issue, were never in fact issued by the Secretary of the Treasury, but by some surreptitious and unlawful means may have been thrown into negotiation or circulation, and, on the other

hand, notes which the Secretary of the Treasury actually issued from his Department of the Government.

Notwithstanding the dearth of evidence tending to show any surreptitious or clandestine use of the Government plates, or of any fraudulent abstraction of notes printed therefrom, the theory which governed the trial requires that such a possibility be contemplated in reviewing the rulings of the judge and his charge to the jury.

The case is one of great importance, not only from the amount directly involved in the recovery, but because there are believed to be a very large amount of notes which are claimed to be counterfeit, a considerable amount of like notes retired at or about the same time which have been pronounced counterfeit, and many suits are pending to recover back money paid by the assistant treasurer for such notes; and because, also, the questions of law involved may, in the future, affect the Government, and parties who hold other apparent securities, purporting to be negotiable obligations of the Government.

The case will, as I understand, by reason of that importance, be taken to the court of last resort, and it is not, therefore, very material how the questions shall be decided in this court, through which the parties must pass on their way to the Supreme Court, save only that the decision here made may determine who shall be plaintiff in error before that tribunal.

To the full understanding of the case, it may be material to
215 bring again into distinct view the statute under which Treasury-notes called seven-thirties were issued, the manner in which such notes were prepared to be issued, and the precise terms of the statute which authorized the Secretary to retire such notes before they had become payable, and to pay a premium therefor in order to withdraw them from the market.

The authority to issue such notes, given by the act of March 3d, 1865, to an amount not exceeding six hundred millions, is above fully stated. (13 Statutes at Large, 468.) It authorized the Secretary of the Treasury to borrow, on the credit of the United States, from time to time, in addition to the amounts theretofore authorized, any sums not exceeding in the aggregate six hundred millions of dollars, and to issue therefor bonds or Treasury-notes in such form as he might prescribe. It fixed the rate of interest. It specified various purposes for which (instead of an actual loan of money) the Secretary of the Treasury might, as he might think advisable, dispose of such bonds or other obligations issued under this act, and gave him a discretion as to the manner, rates, and conditions of such disposition.

It further applied to the bonds and other obligations issued under this act, all the provisions of the act of June 30th, 1864, in relation to forms, inscriptions, devices, and the printing, attestation, sealing, signing and counterfeiting thereof. But it also expressly provided that the act should not be construed as authorizing the issue of legal-tender notes in any form.

The act of June 30th, 1864, (13 Statutes at Large, 218,) pro hac vice adopted by the above-named act, in the 6th section thereof, provided for the making, engraving, sealing, &c., of bonds therein referred to, and then that the Treasury-notes and United States notes authorized thereby "shall be in such form as the Secretary of the Treasury shall direct, and shall bear the written or engraved signatures of the Treasurer of the United States and the Register of the Treasury,
216 and shall have printed upon them such statements showing the amount of accrued or accruing interest and the character of the notes, as the Secretary of the Treasury may prescribe, and shall bear,

as a further evidence of lawful issue, the imprint of the seal of the Treasury Department, to be made under the direction of the Secretary of the Treasury as before directed."

The material words in the act of April 12th, 1866, (14 Statutes at Large, 31,) under which the transactions between the defendants and the assistant treasurer, at the city of New York, were had, and which is above in part recited, are those which, after authorizing certain exchanges of bonds for Treasury-notes or other obligations issued under any act of Congress, also authorized him to dispose of any of the bonds mentioned for lawful money of the United States, * * * "the proceeds thereof to be used only for retiring Treasury-notes or other obligations issued under any act of Congress, but nothing herein contained shall be construed to authorize any increase of the public debt."

By virtue of the above-named two acts, all the notes issued by the Secretary of the Treasury, of the description, in form and date, corresponding with those now in question, (called for convenience seven-thirty Treasury-notes,) were printed from engraved plates, with the engraved signatures of the Treasurer of the United States and the Register of the Treasury, were lettered and numbered by a machine, and were stamped with the seal of the Treasury Department. No writing whatever appeared thereon, either of names, numbers, or words of any kind. They were made and issued in series; each series being designated, and the notes in each series distinguished by the numbers or letters printed thereon. Those which were produced by the plaintiffs as genuine notes, which had been issued by the Secretary of the Treasury, and put in evidence in this case, like those sold by the defendants and subject to this controversy, were dated June 15th,
217 1865, payable three years after date, i. e., on the 15th of June, 1868, and were therefore not due at the time when the notes in question were sold by the defendants, nor when this action was brought to recover back the money paid for the said last-named notes.

I. Numerous questions, touching the admissibility of evidence, were raised in the progress of the trial. Most of them related to the question whether the notes in question were printed from Government plates in the Treasury Department. This enquiry was deemed proper, because, if they were so printed, then some presumption would arise that they were issued by the Government.

Some of them related to the proof of the notes which were, in fact, issued in due course, and the books and papers of the Department, showing to whom issued and when, and what were their numbers, &c., as tending to show what notes, and what only, were issued by the Government. Some related to other particulars.

It must suffice, without taking up and discussing each exception in detail, that I am of opinion that if the principle of liability governing the trial was correct, then no error was committed in these rulings.

A large range of speculative enquiry was urged by the defendants into possible and conjectural modes of accounting for the differences between the alleged counterfeit notes and those which were testified to be genuine, and I think the defendants were allowed quite as much latitude as they were entitled to.

218 II. It is manifest that, upon the merits of the controversy, the statutes and the facts above detailed suggest several interesting questions which were raised on the trial, and were discussed in this court on the writ of error.

1st. The notes in question having been, in fact, purchased from the defendants by the assistant treasurer at New York, is the Government

concluded, or are the questions whether the notes so purchased are forged and counterfeit, and whether they were, in fact, ever issued under the acts of Congress, open to enquiry and proof?

2d. The question of fact, are the notes in question forged and counterfeit?

3d. If not forged and counterfeit, then the question of fact, were they issued under any act of Congress?

4th. If not so issued, in fact, are they obligations of the Government which, in law, the Government is bound to pay, if they were either printed from the Government plates surreptitiously or unlawfully used for the purpose, or were unlawfully and surreptitiously abstracted, without any authority of the officers of the Government, and were negotiated, so that they came to the hands of the defendants as bona fide holders, for value, without notice?

5th. Had the Secretary of the Treasury, or, more definitely, had the assistant treasurer at New York, any authority to purchase the notes in question, for the purpose of having them retired, if they were
219 not notes which had been, in fact, issued by the authority of acts of Congress, even though they were printed from the Government plates, and came to the hands of the defendants for value paid, bona fide, and without notice, and in such wise as, upon the principles of commercial law, to create an obligation on the part of the Government to pay them when they should become due?

1. Upon these questions it is strenuously insisted by the defendants that as the notes in question purported on their face to be obligations of the Government, purported to be issued under and in virtue of the act of Congress, purported to be Treasury-notes of the discription authorized by the act, and as the defendants sold them in good faith to the officer of the Government, believing them to be what they purported to be, and such officer purchased and paid the defendants for them in the like belief, the plaintiffs are concluded the enquiry whether the notes are genuine or counterfeit, and the question whether the notes were or were not in fact issued by due authority is not open; and, in either event, the plaintiffs are not entitled to recover.

I am not able to assent to this claim of the defendants.

1st. If the notes in question were in fact wholly forged and counterfeit, then they were in no sense obligations of the Government, and the assistant treasurer at New York had no authority to purchase them. He acted without authority and under a mistake of facts. Even if he was negligent the Government is not to be prejudiced on that ground when such unauthorized act brought no prejudice to the
220 defendants. I might perhaps go further and say that the Government is not in general bound by the negligence of its officers, acting under a limited authority. It is enough for this point to say that the transaction between the defendants and the assistant treasurer has none of the features which are sometimes held to create an estoppel in pais, and so forbid a disavowal of the act.

It was simply a purchase of apparently negotiable paper, not yet due, which, even if genuine, the Government was not bound to pay at that time; a purchase made in the mistaken belief that the paper was genuine, and the return of which to the defendants and the reclamation of the consideration-money, placed the defendants in precisely the same situation as they were before the transaction. Immediate notice of the claim to such re-imbursement of the consideration being given, the defendants had every recourse to those from whom the paper was received by them that they would have had if the falsity of the paper had been

detected by the assistant treasurer himself, and he had refused to buy them.

The case bears no just analogy to the acceptance of a forged bill of exchange by the drawee thereof. Such acceptance prevents its protest. It is a direct assurance to the holder that the bill is properly drawn and will be paid, upon which he has a right to rely, and does rely. It disarms him of his usual and ordinary means of direct and obvious recourse to prior parties. It thus comes plainly within the doctrine by which conduct or declarations of one made or done to influence the conduct of another, upon which such other has a right to rely and
221 does rely, are held to constitute an estoppel in pais and conclude the former, when to permit him to contradict his conduct or declarations would place the other at a disadvantage or loss, and practically operate as a fraud upon him. Such cases are here cited and relied upon by the defendants, as also cases of the payment of a bill of exchange by the drawee, who for like reasons is held concluded thereby.

This case involves no such considerations. The defendants here lost nothing either of property or security by the mistaken payment. They did nothing in faith of the transaction but receive the money, and lose nothing when they refund it. If their prior purchase of the notes gave them a right of reclamation against others, that right was unimpaired.

The Bank of the U. S. vs. Bank of Georgia (10 Wheat., 334) is also relied upon by the defendants. There a bank received what purported to be its own circulating notes and credited them as cash, and was held, in the circumstances of that case, concluded, so that after the lapse of a considerable interval, having discovered that the bank-bills so received were forged by fraudulent alteration, it could not use that fact as a defense to an action to recover the balance of account including such credit.

Various considerations appear to have influenced the court in that decision, viz, that these were bank-bills circulating as money; that there was negligence in receiving and placing them to the credit of the plaintiffs, which ought to conclude them, and that there *was* further laches in the delay, which allowed a considerable time to elapse
222 before the discovery. I am, probably, not at liberty to question the correctness of the decision made by the Supreme Court in that case. But it is by no means clear that the Supreme Court would have applied the doctrine of that case to a purchase of a note or bill of exchange not yet due and which was not a circulating-medium.

These cases by no means establish that an agent having authority to purchase the promissory notes of his principal not yet due, can conclude his principal by buying forged notes, he neither being authorized or professing to be authorized to buy any but genuine notes. Still less do they establish that the Government can be estopped by such an act of its officer—an act which the Government had not authorized; one which the Secretary of the Treasury had not authorized, and when the assistant treasurer did not profess to have any authority but to buy genuine notes.

I therefore see no material difference in this respect between this case and any other purchase of property or supposed property under a mutual mistake of fact, when the consideration has been paid and the thing purchased turns out not to be what it was represented and believed to be.

If, therefore, this transaction was not authorized by the act of Congress under which the purchase was made, there is nothing in it which operates to estop the Government to prove the facts which take the transaction out of the operation of that act, whether the proof offered be that the notes are counterfeit or not within the purview of the act, on

other grounds. To hold otherwise would be to say that the mere act of the agent operates to estop the principal to deny the authority of the agent to do the act.

223 2. The question of fact, are the notes in question forged and counterfeit, in this, that they were printed from false and fraudulent plates, prepared in imitation of the plates in the Treasury? was a question for the jury, if material. If the views which governed the trial were correct, then, as already suggested, this question was only an incidental question, bearing on the principal inquiry, whether the notes in question were actually issued by the Secretary of the Treasury or by his authority. If printed from the Government plates, some presumption of fact would arise that they were so issued, which it might be material for the Government to rebut. If, on the other hand, printed from false or spurious plates made in imitation of the plates in the Treasury, then there was no evidence, and I do not understand it to be, or to have been, claimed that they were issued by the Secretary of the Treasury, or to have constituted Government obligations in any sense whatever; and hence, if the purchase did not estop the Government, the plaintiffs were entitled to recover.

3. If not forged and counterfeit in the sense last above suggested, but actually printed on the same plates as the confessedly legal notes, then were those particular notes ever issued under any act of Congress? This question, as a mere question of fact, viz, were they, as a "physical act" of the Secretary of the Treasury, issued by him, was submitted to the jury, and they have found for the plaintiffs. Such finding calls for no discussion of the question as one of mere fact. It leaves, however, the two remaining questions of law to be adverted to.

224 4. If the notes in question were not, in fact, issued by the Secretary of the Treasury or by his authority, then did they constitute obligations which the Government as matter of law was bound to pay when they should come to maturity, if they were actually, though surreptitiously and fraudulently, printed from the Government plates, dies, and stamps, or, being printed, were unlawfully and fraudulently abstracted, without such authority, and negotiated so that they came to the hands of the defendants as bona-fide holders for value, without notice.

This question is one of an importance that can hardly be overstated. It is such to the Government, which has, by act of Congress, provided for the manufacture of commercial paper by means that require no other authentication than the impress of the machinery by which it is produced, and to the people in this country and wherever the Government of the United States has credit, and who accept and receive in the ordinary course of business such paper, bearing every evidence of authenticity which the acts of Congress prescribe in affirmance of the legal validity of any of their obligations.

The case is in this respect peculiar. The moment a note was produced, by the use of the plate, dies, and stamps prepared by the Secretary of the Treasury, it was a completed instrument, as perfect as a note would be if it had been required to be in the handwriting of the Secretary himself and be signed by him, and he had written and signed it. The acts of Congress provided for the making and issue of many hundred millions of dollars in such notes, and in small amounts, adapted to the capacity of our humblest citizens, whose patriotism might

225 prompt them to lend their money thereon, or to receive them in course of negotiation, and thus aid the Government in its exigency. They were negotiated, and the form and nature of the transac-

tion shows that it was the hope and intent of the acts of Congress that they should be negotiated, throughout the whole of our loyal territory, and in every town and village in its remotest sections.

It may be asked, therefore, with great pertinency and force, was it intended that every one who took such notes should first enquire, not alone whether they were made by printing from the Government plates and stamps, and sealed with the Treasury seal, and bear on their face all the genuine marks and evidence of lawful issue which the acts of Congress prescribed, but also, and further, did the Secretary or some one authorized by him issue them as a "physical act?" Is such a requirement, according to legal principles, just and reasonable to constitute the holder a bona-fide holder? And, if not so issued, is there no legal obligation binding the Government to their payment?

It would, nevertheless, be difficult to hold that the circumstance that the Government had procured the requisite machinery, plates, and stamps, was enough to bind the Government to the payment of all notes which, by any means, were printed thereon or therewith. If such instruments, though provided for the making of valid notes, should be stolen or be fraudulently used to make such notes, it would not be true that they were negotiable paper made by Government authority. Providing the means of making such paper and so carefully guarding it that innocent persons were deceived, by one or some who without authority used those means, might lay the foundation for a strong appeal to a sense of justice and equity; but the holders of paper so made would find some difficulty in sustaining the averment, at law, that the Government made the notes. Be this as it may, when the Government has not only prepared the instruments, but has authorized *authorized* the making of the paper, and it is actually made, (printed, numbered, stamped, and sealed,) bearing all the marks of genuineness prescribed by law, and is thus in existence, in the keeping of the Secretary of the Treasury or his subordinate agents, the question may, perhaps, present a different aspect. If fraudulently or feloniously abstracted and negotiated, do the notes constitute valid, legal obligations in the hands of innocent persons receiving them for value without notice?

226

Such completed paper, in the actual possession of the Secretary of the Treasury, may be likened to notes complete in form and signed by an individual and locked in his desk. In the latter case, is it doubtful that if the notes be fraudulently or feloniously abstracted from the desk, and be negotiated so that they come to the hands of an innocent person, who gives value therefor before maturity without notice, the signer is bound, by the settled rules of commercial law, to pay them?

It has been said, with what I deem just accuracy, that when the Government engages in the making and negotiation of commercial paper, it submits itself to the settled rules of commercial law, and in that respect stands before the courts of law (whenever jurisdiction is properly obtained, as is the case when the Government is plaintiff) to receive the application of those rules precisely as they would be applied to an individual*.

227

If a bank issuing bills for circulation should resort to the like mode of making bills which was adopted by the Government, and the names of its officers, purporting to be signed to the bills, were in fact fac similies in lithograph, it would not be doubted that the bank was bound to re-

* The Floyd Acceptances, 7 Wallace, 606–675; U. S. vs. Bank of the Metropolis, 15 Peters, 392; U. S. vs. Barker, 12 Wheat., 539; Delafield vs. State of Illinois, 26 Wend., 192; Davis vs. Gray, 16 Wallace, 203–232; Curran vs. State of Arkansas, 15 How., 309, and cases there cited.

deem such bills. If such bills were fraudently obtained from the bank vaults and put into circulation, the obligation of the bank to pay them would be no less clear.

In this respect, is there any difference in the question of liability when the paper is a negotiable note payable in the future, intended not for circulation as money, but for negotiation in the course of business, for loans or otherwise?*

228 This question, whether, under the circumstances on this point above embraced in the fourth question, the notes would constitute Government obligations, enforceable as such whenever jurisdiction was obtained for the purpose, was largely discussed on the argument, and its interest and importance led me into a very extended examination of the subject and of the authorities in England and this country which bear upon it. But it would not be profitable to pursue the discussion here, since the case was not made to turn in the district court upon this question. The final proposition, upon which the case went to the jury, and upon which their verdict must be taken to have been founded, does not require the determination of the question whether, upon the facts here assumed, the Government would, at the maturity of the notes, be legally bound to pay them, although not in fact issued physically by the Secretary of the Treasury, or by any lawful authority. The charge to the jury was in effect that, if not so issued, then the act of April 12th, 1866, did not authorize the Secretary of the Treasury to retire them, and the payment by the assistant treasurer in New York to the defendants of money of the United States was wholly unwarranted by any legal authority, and such payment was properly repudiated.

5. If this instruction was correct, it disposes of the case; and this is the subject of the question above fifthly stated.

Had the assistant treasurer at New York any authority to pay the money of the United States to the defendants in the purchase, for retiring the notes, if they were not in fact issued by the authority of

229 acts of Congress, even though they were printed by the agents of the Government from the Government plates, were duly stamped and sealed, and came to the hands of the defendants in such manner as, upon the principles of commercial law, to create an obligation on the part of the United States to pay them when they should become due?

The answer to this question was made, and properly made, to depend upon the construction of the act of April 12th, 1866, authorizing the Secretary of the Treasury to retire Treasury notes which were not then due. In words, that act directs the proceeds of the bonds therein mentioned, "to be used only for retiring Treasury-notes, or other obligations issued under any act of Congress."

The charge hereupon was:

---

* Liability of individuals: Peacock vs. Rhodes, 2 Doug., 633; Miller vs. Rice, 1 Burr, 432; Valletto vs. Parker, 6 Wend., 616; Michigan Bank vs. Eldred, 9 Wallace, 544; Ingham vs. Primrose, 7 Com. Bench, N. S., 82; Van Duzer vs. Howe, 21 N. Y., 531; Young vs. Grote, 4 Bing., 253; Bank of Pittsburg vs. Neal, 22 How., 96.

Liability of corporations for acts of its agents: Farmers & Mech's' Bank vs. Butchers & Drovers' Bank, 14 N. Y., 623, 16 N. Y., 125; N. Y. &. N. H. R. R. Co. vs. Schuyler, 34 N. Y., 30; Merchants' Bank vs. State Bank, 10 Wallace, 604–645.

Of the agents of the Government: U. S. vs. McDonald. 7 Peters, 1.

Liability of municipal bodies on negotiable paper: Comrs. of Knox Co. vs. Aspinwall, 21 How., 539; Same vs. Wallace, 21 How., 549; Bissell vs. City of Jefferson, 24 24 How., 288; Mercer Co. vs. Hacke, 1 Wallace, 83; Gelpcke vs. City of Dubuque, 1 Wall., 176; Thompson vs. Lee Co., 3 ib., 327; Supervisors vs. Schenck, 5 ib., 772; Lexingston vs. Butler, 14 ib., 282; Lynde vs. The County, 16 ib., 6; St. Josephs vs. Rogers, 16 ib., 644.

See the Floyd Acceptances, 7 Wall., 666.

"The authority it conferred upon the Secretary of the Treasury and the subordinate officers of the Treasury Department was solely to retire Treasury-notes issued under some act of Congress. If they were not issued under some act of Congress, they were not within the lawful powers delegated to the Secretary of the Treasury by the act of 1866. The entire matter is regulated by statute, and if these notes were in fact not issued under an act of Congress, there was no authority on the part of the Secretary of the Treasury or of any other officer, high or low, not even of the President of the United States himself, to retire or redeem them."

To make more plain what was meant by "issued," it was subsequently charged:

230 "The act of issuing the notes was, under the statute, a physical act. The notes may be printed in the Department from the genuine plates, and may be all ready to issue, and yet, if they are not in fact issued, they do not come within the statute.

"It is for the purpose of showing the physical act of issuing the notes that the Government has given the testimony to which I have referred. The United States are not bound to redeem any notes which were not in fact issued. There is no authority to retire the notes unless they were issued as a physical fact."

There are some remarks in the charge which may be deemed to hold that, if not so issued, the Government was under no obligation to pay them when due, however printed and gotten into course of negotiation. But the authority to retire them under the act of 1866, before maturity, was really the point in issue, and it was that which was made the test of the plaintiffs' right of recovery, as still further indicated thus: "If you find that in point of fact these C notes were not issued by the United States, then the plaintiffs are entitled to recover, provided," &c.

* * * * * * *

"The ultimate question is not whether the C notes are spurious or genuine; * * * that is a collateral question, * * * gone into as bearing on the question whether the C notes were ever issued by the United States."

These instructions made the question of ultimate duty to pay the notes, when due, immaterial, if the act of 1866 did not authorize the Secretary of the Treasury to retire them.

And as they were not due at the time this action was commenced,

231 the ownership thereof by the defendants constituted no defense in the nature of a set-off, if such ultimate duty to pay them were conceded.

We are, therefore, brought distinctly to the construction of the act of 1866. Did it authorize the Secretary of the Treasury to pay out the money of the United States to retire any Treasury-notes not actually (as a physical fact) issued by the Secretary of the Treasury, or by his authority?

There is room for grave doubt of the correctness of the rulings at the trial on this point; and not only in reference to this case, but to several others now pending, it is important that the opinion of the court of last resort should be had at as early a day as is practicable. Large amounts may depend upon the question. Time is of great importance where witnesses are numerous, and are liable to be removed by death or otherwise. I ought not to reverse and send the case back for another trial, with the necessarily incidental delays in the progress of a final determination, unless a very clear and decided conviction makes it my duty to do so.

The notes which the Secretary was authorized to retire were "Treasury-notes or other obligations issued under any act of Congress."

It may be, plausibly at least, suggested that the object of this statute was to change the form of the public debt; to substitute for obligations having but a short time to run before maturity other obligations payable at a day comparatively remote; to reduce, in fact, the outstanding debt rapidly approaching maturity.

That if such notes constituted obligations of the Government,
232 they were within the scope and meaning of the act, by whatever agency or means they were put into circulation or negotiation.

That the fair and natural construction of the terms embraces whatever notes made, printed, and sealed as evidence of lawful issue, pursuant to acts of Congress, were bearing interest against the Government, and were then outstanding.

That these terms of description are broad and comprehensive, neither suggesting, nor intended to suggest, any distinction between such notes as were issued legally or by lawful authority, and any which might have been surreptitiously and fraudulently abstracted and put into course of negotiation. That in the proper and commercial sense, any negotiable paper is "issued" by the maker, if he has made it, and it has passed into negotiation so as to bind him to pay it, whether this was effected by fraud or otherwise without his consent. Especially that such language applied to bank-bills of a bank issuing circulating-paper would be construed so as to include, under a description "bills issued by the bank," all bills outstanding which the bank was bound to pay, even though it was known that a considerable amount or number of bills were in circulation which had been fraudulently abstracted from its vaults; and, in construing these terms of description in this statute, there is no reason for giving to the term "issued" a more rigid or restricted meaning. That there is nothing true, in fact or in the history of the subject, of which the court has any notice, to indicate that Congress had in view any occasion for such a discrimination; that
233 had Congress intended to discriminate between notes which were lawfully put into negotiation by the Secretary of the Treasury and notes made and completely ready for negotiation, but surreptitiously or fraudulently abstracted and negotiated, the act would have stated such intent in more distinct terms for the guidance of the officers of the Government. And, finally, there is no just reason for making such a discrimination on the one hand, while, on the other, the presumption that the Government, having engaged in the issue of commercial paper, and being jealous of its honor and credit, would not make such a discrimination against those who, in reliance on the faith of the Government, have innocently taken notes, genuine in all respects in their preparation and authentication, and bearing every prescribed mark and indicium of lawful issue, but were only distinguishable from others by a fact not appearing upon their face, viz, that they were put into negotiation without lawful authority.

It should, however, be borne in mind that, however impressive these considerations are in their bearing on the question whether the Government ought to pay such notes, they are not necessarily applicable to the gratuitous act of retiring Treasury-notes before they became due, or to a voluntary purchase of Treasury-notes. So long as such notes had not become payable, the question of ultimate liability to pay them might be postponed without injustice to any one. There was, therefore, no consideration of justice or equity towards third persons to operate upon Congress in providing, for reasons of its own, for retiring any notes

which it saw fit to retire. Such considerations cannot, therefore,
234 be properly invoked to affect the construction of an act of Congress in its nature, as to third persons, wholly gratuitous and voluntary.

It was, therefore, wholly competent and entirely equitable and just for Congress to designate, in any terms deemed appropriate, the notes to retiring which the "proceeds" mentioned in the act might be applied, and limit such application to those "only."

Again, it is quite obvious that the question whether the United States is bound to pay, in a given case, Treasury-notes which have not, in fact, been negotiated by the Secretary of the Treasury, or by his authority—whether, in a given case, the holder is entitled to recover upon the rules of commercial law—may be a difficult and complicated question, depending upon proof of facts, and often upon the weight of testimony, which may be nicely balanced. The extended and complicated litigation in this very case may be an illustration of the uncertainty thus suggested. The question, where notes have been surreptitiously or fraudulently abstracted, whether they are held under circumstances which make them Government obligations at all, is a judicial, not an administrative, question. Facts, to be ascertained and found by a jury, and rules of law, to be declared by a court, are involved in the enquiry.

The theory of the charge in this case may be stated to be, that it was not the intention of the act of Congress to confer upon the Secretary of the Treasury or his subordinate officers the exercise of judicial powers in this respect. It was not for them to enquire into those questions of notice, bona fides, or payment of value, upon which the ultimate liability of the Government to pay notes thus fraudulently abstracted from
235 the Treasury would depend. As to notes actually issued by the Secretary of the Treasury, no question of liability could arise. For retiring those he was authorized, at once and summarily, to use the proceeds mentioned in the act. As to any others, the holders would, at maturity, have such recourse to the Government, through Congress or the Court of Claims, as the laws will warrant, and would have such relief as might be jus'ly due. Not only so; the investigation which might then be had, and the disclosures which in such investigation might be compelled, might result in enabling the Government to reach the fraudulent parties, even though it should be deemed bound to pay the amounts to innocent holders.

There were, therefore, reasons, and important reasons, for the discrimination in question. Congress should not be deemed to have invested the Secretary of the Treasury or his subordinates with such extraordinary, summary judicial powers, powers which might operate to increase the public debt, if erroneously exercised, and that in the face of the express limitation in the same statute which declares that the public debt shall not be thereby increased.

The authority to retire these notes is a special statute authority, and is not to be extended by construction. And especially in view of the considerations above suggested, that the meaning of the word "issued" is satisfied by the construction given to it in the charge. It imports an official act, not the possible legal effect of a felonious or fraudulent abstraction.

For illustration of the strictly legal question, it may be supposed that after the preparation (in full and complete form and detail
236 for issue) of six hundred millions of notes, (or any other amount,) one-half were negotiated by the Secretary of the Treasury, but the other half were fraudulently abstracted from his office. Reasons of

obvious importance to the Government might suggest the propriety not only of giving every possible description of notice and warning, to put the community on their guard, but of at once retiring all that were duly issued by substituting other obligations distinguishable therefrom.

An act simply authorizing that should not lightly be construed to authorize also the retiring of the others, if found in the hands of persons claiming to be bona-fide holders for value without notice. It may be true that, in such an act, it would be fitting and proper to declare the discrimination in clear and distinct terms; but if the terms used were such as could be satisfied by excluding the notes so fraudulently abstracted, courts would be reluctant to hold that it intended to authorize the Secretary of the Treasury, or his subordinates, to sit as court and jury to try the question with each holder, whether he had received such paper under such circumstances that, upon the principles of commercial law, the Government was liable thereon.

No special circumstances of this kind are known to the court to have led to the act now under consideration. And yet if the act is satisfied by limiting the authority of the Secretary of the Treasury in the performance of this gratuitous and voluntary act to notes which were in fact issued, it may be the duty of courts, in view of the considerations suggested, to give it that limitation.

These views are of such force and significance as to warrant my conclusion upon the whole case that it is my duty to affirm the judgment.

(Endorsed:) Filed May 13th, 1874.

237 Circuit court of the United States for the southern district of New York in the second circuit.

JAY COOKE, WILLIAM G. MOREHEAD, HENRY D. Cooke, Harris C. Fahnestock, Edward Dodge, and Pitt Cooke,
ads.
THE UNITED STATES OF AMERICA.

To Hon. Ward Hunt, justice of the Supreme Court of the United States:

The petition of Edwin M. Lewis respectfully shows:

That under an act of Congress of the United States approved the second day of March, 1867, commonly known as the bankrupt law, proceedings in bankruptcy were instituted against the above-named defendants, composing the firm of Jay Cooke and Company; and that such proceedings were thereupon had that, under and in pursuance of the 43d section of the said law, your petitioner was selected, nominated, and
238 appointed trustee for the purpose of winding up, settling, and distributing the estate of said bankrupts among their creditors, and that he became, and is possessed of the powers, and vested with the rights conferred by the bankrupt law aforesaid.

Your petitioner further shows that a judgment was rendered on the thirtieth day of November, 1871, in favor of the United States against the said defendants for the sum of twenty-five thousand five hundred and eighty $\frac{56}{100}$ dollars, in the United States district court for the southern district of New York; and that a writ of error was issued out of said court to the circuit court of the United States for the southern district of New York, in which last-mentioned court the said judgment was affirmed, and judgment rendered against said defendants for the sum of thirty thousand one hundred and sixty-five dollars and three cents.

That in the opinion delivered by the honorable Lewis B. Woodruff, who rendered said judgment in the circuit court, the learned justice

states, among other things, that the case is one of great importance, not only from the amount directly involved, but also from the fact that other suits are pending to recover back money paid by the assistant
239 treasurer of the United States, under similar circumstances, and because also the questions of law involved may in the future affect the Government, and parties who hold other apparent securities purporting to be negotiable obligations of the Government.

He also says, "The case will, as I understand, by reason of that importance, be taken to the court of last resort, and it is not, therefore, very material how the questions shall be decided in this court, through which the parties must pass on their way to the Supreme Court, save only that the decision here made may determine who shall be plaintiff in error."

That said justice, in his opinion, in regard to one of the turning points of the case, used the following language: "There is room for grave doubt of the correctness of the rulings at the trial on this point; and not only in reference to this case, but to several others now pending, it is important that the opinion of the court of last resort should be had at as early a day as is practicable."

Your petitioner further shows that he has been advised by
240 counsel that the interests of the creditors of said bankrupts, and those interested in their estate, require that the case should be taken to the Supreme Court of the United States, for the purpose of reviewing the correctness of the decisions of the district and circuit courts; and that, under and by the advice of counsel, he intends, in good faith, to prosecute a writ of error to the Supreme Court of the United States.

That it is essential and necessary for the protection of said estate, and of the rights of parties interested therein, that all proceedings upon the judgment against the said bankrupts should be stayed pending said writ of error, and that it is impracticable for your petitioner to furnish security in the form of a bond, but that he is willing to furnish security in such amount as this court may direct, either by depositing with the clerk of this court, to the credit of this cause, money, or, what would be preferable and more beneficial, to deposit with such clerk, to the credit of the cause, such an amount of Government bonds as the court might deem sufficient; the advantage of depositing the latter
241 being that the interest upon the amount so deposited would be saved to the estate.

Your petitioner therefore prays that a writ of error to the said circuit court, and the usual citation, may be allowed; and that an order be entered, that upon depositing with the clerk of the circuit court of the United States for the southern district of New York, or such other depositary as may be selected, such an amount of money or such an amount of Government bonds, as to the court may seem sufficient to secure the United States against all loss and damage, pending said appeal, said writ of error may operate as a supersedeas, and that all proceedings on said judgment may be stayed pending said writ of error, until the decision thereof.

And your petitioner will ever pray.

EDWIN M. LEWIS.

STATE OF PENNSLYVANIA,
City and County of Philadelphia, ss:

On this 4th day of August, 1874, before me personally appeared Edwin M. Lewis, to me known to be the petitioner in the foregoing petition mentioned, who, being by me duly sworn, did depose
242

and say, that he has heard read the foregoing petition by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

EDWIN M. LEWIS.

Sworn and subscribed before me this 4th day of August, A. D. 1874.
[L. S.] CHAS. P. CLARKE,
N. Y. Comr.

(Endorsed:) U. S. circuit court, S. D. of N. Y., second circuit. Jay Cooke et al., plaintiffs in error, ads. The United States, defendant in error. Petition of Edwin M. Lewis. C. D. Burrill, atty. for plffs. in error. Due service of a copy of the within petition admitted August 13th, 1874. Filed August 13, 1874.

243 U. S. circuit court for the southern district of New York, in the second circuit.

JAY COOKE ET AL., PLAINTIFFS IN ERROR,
vs.
THE UNITED STATES, DEFENDANTS IN ERROR.

On reading and filing the petition of Edwin M. Lewis, trustee in bankruptcy of the estate of the above plaintiffs in error, setting forth in substance the recovery of a judgment in the district court of the United States for the above district, in favor of the above defendants in error, and against the above plaintiffs in error, and the affirmance of said judgment by the above circuit court on a writ of error, and by which petition it appears that the judgment in the circuit court was entered on the 18th day of May, 1874, for the sum of thirty thousand one
244 hundred and sixty-five dollars and three cents; and that the said petitioner, under the advice of counsel, intends and desires to prosecute a writ of error out of the United States Supreme Court to review said last-named judgment, and for the purpose of securing said judgment and the costs and damages which the above-named The United States may sustain by reason of such writ of error, the said petitioner having offered to deposit with the clerk of said circuit court United States bonds to an amount sufficient to cover and protect the United States on such writ of error; and it appearing that the case is one which is proper to be presented to the Supreme Court for their decision, and that the judgment of the circuit court was rendered in view of the fact that the case would be taken to the appellate court; and a writ of error to said circuit court, returnable on the 2nd Monday of October, 1874, having been allowed, and the citation, returnable at the same
245 time, having also been issued, it is, on motion of Charles D. Burrill, attorney for the above-named plaintiffs in error, ordered: That on the deposit by the petitioner with the clerk of the circuit court of the United States at the city of New York, to the credit of this action, United States Government bonds to the par value of forty thousand dollars, and on the service of the aforesaid writ of error and citation, the same shall operate as a supersedeas of execution herein, and that all proceedings on said judgment of the said circuit court of the United States be, and the same are hereby, stayed until the hearing and judgment of the Supreme Court of the United States upon the said writ of error.

And it is further ordered that the said clerk shall collect the interest which may, from time to time, become due on the said bonds, and shall pay over the same to the said petitioner or attorney for the plaintiffs in error herein, and take receipt therefor; and that the said clerk hold the said bonds so deposited with him to the credit of this case, and subject to the further order of this court.

246

(Signed) WARD HUNT,
Asso. Just. Sup. Ct. U. S.

August 11th, 1874.

(Endorsed:) U. S. circuit court, S. D. of N. Y. Jay Cooke et al. ads. The United States. Order authorizing deposit of Govt. bonds as security on appeal. C. D. Burrill, atty. for plffs. in error.

Due service of a copy of the within order admitted.
August 13, 1874.
(Signed) GEORGE BLISS,
U. S. Atty.

Filed Aug. 13, 1874.

247 Supreme Court of the United States.

JAY COOKE, WILLIAM G. MOREHEAD, HENRY D. COOKE, HARRIS C. FAHNESTOCK, EDWARD DODGE, and PITT COOKE, comprising the firm of JAY COOKE and COMPANY, plaintiffs in error,
against
THE UNITED STATES, DEFENDANTS IN ERROR.

And afterwards, to wit, on the second Monday of October, in the same term, freely come here into court the said United States by their attorney, George Bliss, and say that there is no error, either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid; and they now pray that the said Supreme Court of judicature, before the justices thereof now here, may proceed to examine, as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error; and that the said judgement aforesaid, in form aforesaid given, may in all things be affirmed.

248 (Endorsed:) Supreme Court of the United States. Jay Cooke et. al., plffs. in error, agst. The United States, defts. in error. Joinder in error. Due service of a copy of within joinder in error is hereby admitted. C. D. Burrill, atty. for plffs in error. Augt. 31, 1874. Filed Sept. 1, 1874.

249 By the honorable Ward Hunt, one of the justices of the Supreme Court of the United States.

To the United States of America, and George Bliss, esquire, their district attorney for the southern district of New York, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error issued to the circuit court of the United States for the southern district of New York in the second circuit, and filed in the clerk's office of the last-named court, wherein Jay Cooke, William G. Morehead, Henry D. Cooke, Harris C.

Fahnestock, Edward Dodge, and Pitt Cooke, comprising the firm of Jay Cooke and Company, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

250 Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 11th day of August, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-eighth.

WARD HUNT,
Asso. Just. Sup. Ct. U. S.

251 (Indorsed:) U. S. circuit court, S. D. of N. Y., second circuit. Jay Cooke et al. ads. The United States. Citation. C. D. Burrill, atty. for plffs. in error. E. & A., p. 145.

Service of a copy of the within citation admitted this August 13, 1874.

GEORGE BLISS,
U. S. Atty.

Fil. Aug. 13th, 1874.

(Indorsement on cover:) No. 527. S. New York, C. C. U. S. Jay Cooke, William G. Morehead, H. D. Cooke, H. C. Fahnestock, Edward Dodge, and Pitt Cooke, as Jay Cooke and Company, plaintiffs in error, vs. The United States. Filed 29th September, 1874.

Supreme Court

OF THE UNITED STATES.

JAY COOKE, and others,
Plaintiffs in Error,

vs.

THE UNITED STATES,
Defendants in Error.

527

December Term, 1874.

Brief for Plaintiffs in Error

JOHN E. BURRILL,
Of Counsel.

NEW YORK:
JAMES MCGEE, PRINTER, 95 BLEECKER ST.,
1875.

U. S. Supreme Court.

No. 527.

JAY COOKE AND OTHERS,
Plaintiffs in Error,
vs.
THE UNITED STATES,
Defendants in Error.

Brief for Plaintiffs in Error.

This is a writ of error to the Circuit Court, for the Southern District of New York, Second Circuit, to review a judgment affirming a judgment of the District Court, in favor of the United States against Jay Cooke & Co., on the 29th November, 1871, for $25,580.56.

The action was brought to recover the amount of eighteen instruments, purporting to be 7-30 coupon notes, and interest thereon, which, it was alleged, were presented by the plaintiffs in error to the Assistant-Treasurer of the United States at New York, and for which the latter paid the amount of said notes, interest and premium thereon.

The declaration contained two counts upon each note, each set of counts being in all respects alike, except as to the description of the notes.

The first count, after stating that the defendants were indebted for so much money had and received to and for the use of the United States and their property, alleged that such money was obtained "upon the occasion of the defendants' having delivered to the plaintiffs therefor

what purported to be a certain obligation of the United States aforesaid, known as a seven-thirty note and coupon attached, for the principal sum of one thousand dollars, and nineteen dollars and sixty cents interest, to wit, a note (description of note), which note with coupon was, by the said defendants, at the time they delivered it to the officer of the Sub-Treasury of the United States aforesaid, professed to be, and by the plaintiffs and their officer was, when received, supposed to be a genuine note, and by the representations and inducement of the defendants, then and there practised, the same was received by the United States and their officers as a genuine note" (page 5).

The count then charges, "that the said note and coupon were, in fact, counterfeit, and neither had been executed *or issued* by the United States of America, but had been forged, falsely made, and uttered, and were no obligation of or upon the United States, and were by the United States, to wit, by their officer aforesaid, received under the belief created by the representations and inducement aforesaid, that the said note with coupon attached was good, and formed a valuable and adequate consideration for the money received by the defendants, which was retained from the plaintiffs after discovery that the note and coupon were counterfeit, whereof prompt notice was given to the defendants;" and that thereupon defendants being indebted, promised to pay, but neglected and refused so to do (page 5).

The second count is in usual form of counts, *indebitatus assumpsit.*

The plea was a general issue.

The cause was tried before District-Judge Blatchford and a jury, on the 15th November, 1870, and a verdict found in favor of the plaintiffs for the amount paid by the Assistant-Treasurer of the United States for the eighteen notes, and the interest thereon, amounting in all to $23,630.88, on which verdict judgment was rendered.

It was conceded at the trial that Jay Cooke & Co. were *bona-fide* holders of the instruments in question, and that in the transaction in question they and Mr. Van Dyck, the Assistant-Treasurer of the United States, acted in good faith.

The Court ruled that the averment in the declaration that the defendants represented the notes to be genuine was supported by the mere fact that the notes were not actually issued by the United States and without further proof (page 29).

On the 3d of March, 1865, Congress authorized the Secretary of the Treasury to borrow, on the credit of the United States, not exceeding six hundred millions of dollars, and to issue therefor bonds or treasury notes of the United States, bearing interest not exceeding seven and three tenths per centum per annum, payable semi-annually (13 Statutes at Large, 468). Such notes were not made a legal tender. Under this act, treasury-notes to a large amount were issued by the Secretary of the Treasury, payable three years after date.

On the 12th of August, 1866, Congress, by another act, authorized the Secretary of the Treasury, at his discretion, to receive any treasury-notes or other obligations issued under any act of Congress, whether bearing interest or not, in exchange for any description of bonds authorized by the previous act of March 3d, 1865, and also to dispose of any description of bonds authorized by such previous act, * * * for lawful money of the United States or for any treasury-notes * * * which have been or which may be issued under any act of Congress, the proceeds thereof to be used only for retiring treasury-notes or other obligations issued under any act of Congress; but nothing herein contained shall be construed to authorize any increase of the public debt (14 Statutes at Large, 31).

On each of several days from and including September 20th and October 8th, 1867, the defendants (the plaintiffs in error) presented to the Assistant-Treasurer of

the United States, at the City of New York, large amounts of treasury-notes purporting to be issued under the above act of 1865, dated June 15th, 1865, and payable three years after date, among which it was claimed were the notes in question in this suit.

The record shows that in the process of redemption the packages of notes to be redeemed were accompanied by bills of sale (of which a sample, marked "Exhibit A, No. 1," will be found at page 89), and were handed to examiners and counters, and thereafter a check upon the Assistant-Treasurer was given for the amount; and that the notes after being canceled by punching out the signature of the Treasurer, and other signatures on the note (page 91), were forwarded to Washington by express in packages twice a week. (Russell's testimony, page 30.) One of the bills of sale is in these words (page 89):

"Sold Hon. H. H. Van Dyck, Assistant-Treasurer of the United States, No. 700, by Jay Cooke & Co, corner of Wall and Nassau Streets, September 20:

$400,000, June, $7\frac{3}{10}$,	107, . . .		$428,000.
	97 days, . .		7,760.
$100,000, July, "	107, . . .		107,000.
	67 days, . .		1,340.
			$544,100.

The notes thus received from the defendants were forwarded by the Assistant-Treasurer to the Secretary of the Treasury at Washington, and, on examination there, eighteen thereof, of one thousand dollars each, were pronounced not to be genuine treasury-notes issued by the Government of the United States, and were thereupon returned to the Assistant-Treasurer at New York, who claimed that he had received them from Jay Cooke & Co, and, on the 13th of October, 1867, notified them that they were counterfeit, and required them to refund the money paid for them or substitute other notes for them.

One of the defences interposed at the trial was, that the eighteen notes claimed to have been paid by the

plaintiffs, and which were introduced on the trial, were not received from the defendants, but that they were received from some person other than the defendants' firm.

There was no record kept in New York of the numbers or other description of the notes received by the Assistant-Treasurer, and the accounts contained merely the aggregate amounts presented by each party, and the notes were sent to Washington without any means of identifying them. (Russell's testimony, page 30; Scovill's testimony, page 32.) Nor was there any record kept in Washington of the numbers or description of the Bonds received from New York, or any evidence preserved to show from whom any particular bond was received. (Andrews' testimony, page 34.)

None of these notes bear the endorsement of Jay Cooke & Co., but it was claimed by the plaintiffs that they bore the impression of a stamp, containing the words "Pay to the Secretary of the Treasury for redemption—Jay Cooke & Co.;" and that said stamp was charged with some adhesive substance, and impressed upon the back of the notes in the square, which contains the words "Pay to bearer." (Irwin's testimony, page 30.)

When the notes were produced at the trial, the impressions made by this stamp had become obliterated, and in some instances had (from ordinary eyes) totally disappeared, but witnesses were introduced from the Government offices at Washington, who had been in the habit of handling notes similarly stamped, and they testified that they could at the time of the trial read the words "Jay Cooke & Co." stamped on the back of the notes. (Irwin, pages 30–32.)

In this condition of the evidence, there being nothing to connect the plaintiffs in error with the notes, the Government called Mr. Fahnestock, one of the defendants (page 39), who testified that they kept a record of all notes received by them from all sources, and the dates and names of the parties from whom purchased, and also a

record of all notes sold by them, and to whom, and when, but kept no record of notes sold or transferred to the Assistant-Treasurer of the United States, and produced three books, two of which were registers of notes, marked 'J 1' and 'J 2,' and a letter-book marked 'J 3.'

Plaintiffs then read from the letter-book twelve letters, copies of all which, except one which was illegible, are inserted among the exhibits at the end of the case (pages 97, 98, 99), which letters were received as admissions by Jay Cooke & Co. that these identical notes had been transferred by them to the Assistant-Treasurer.

The defendants thereupon offered to prove by Philip W. Holmes, that all these letters were written or drafted by him, and sent by him, acting on the information derived from the Sub-Treasurer that the statement in reference to the notes being counterfeit was correct, without knowing about the identity of the notes. This was objected to, and the objection sustained, and defendants excepted (page 70).

The eighteen notes claimed to be counterfeit were introduced in evidence by the United States and marked 'C 1' to 'C 18' (page 39), and one of the notes is represented by a photograph showing the back and front of such note, which formed part of the record (pages 91, 92).

Several witnesses were called by the Government to prove that the notes were not genuine, and many exceptions were taken by defendants below to rulings in regard to particular questions.

George W. Casilear, superintendent of engraving and transferring in the Treasury Department, proved that the work on the genuine '7–30' notes was made up under his supervision, and that the plates were engraved in the Treasury building under his superintendence, and that he did some of the engraving on the plates, and he pointed out the particular portions of his work, but the plates were not produced. (Record, pages 40, 41.)

He was asked these questions:

1. "Q. From your observation of these notes, and

your knowledge of the genuine plates, were these notes, 'C 1' to 'C 18,' printed from those plates?" Question objected to; objection was overruled, and defendants' counsel excepted (page 41).

2. "Q. Were those eighteen notes, 'C 1' to 'C 18,' printed or not from any plate referred to by you as having been got up by you under your supervision in the Treasury Department, from which 7-30 notes of the second series used by the Government were printed, so far as you know?" Same objection: overruled, and exception. "A. They were not" (page 41).

This witness, Casilear, examined one of the 'C' notes and one of the 'K' notes, compared them, and stated minute differences between different portions of such notes (pages 41, 42, 43).

David M. Cooper, a witness for the plaintiffs, testified that he engraved the original die from which the seals used on the alleged genuine notes were produced by what is termed the transfer process, and was asked these questions:

3. "Q. Could that die, which you engraved, have produced that seal on the counterfeit?" Objected to; objection overruled, and exception by defendants. "A. It could not." (Record, page 47.)

4. "Q. Did you ever know of a note, like those marked 'C,' to be printed from the plate from which the notes marked 'K' were taken?" An exception was taken to this question, which was overruled, and the witness answered in the negative (pages 49, 50).

Eighteen notes were produced, marked 'K 1' to 'K 18,' which were proved to be genuine notes (page 41); and these were offered and received in evidence against our objection and exception (page 58).

As further evidence of the genuineness of the 'K' notes, Bigelow (page 57) produced coupons claimed to belong to the eighteen 'K' notes, and stated that he had searched for similar coupons for the eighteen 'C' notes, and was then asked the question:

5. "Q. Have you been able to find on the files of the department any duplicate numbers of these coupons corresponding with the 'C' notes?" Objected to by the defendants; objection overruled, and exception taken. "A. No; these are all I could find with these numbers" (page 57).

Plaintiffs then offered in evidence the coupons belonging to the 'K' notes, spoken of by the witness Bigelow, and they were received against the objection and exception of the defendants (page 58).

After the case on the part of the plaintiffs was closed (page 58), the defendants introduced evidence for the purpose of showing, in substance, that the alleged differences between the 'K' notes and the 'C' notes, mentioned by the witnesses for the Government, could be accounted for by defects occasioned in the process of re-entering and re-transferring (rendered necessary by the wearing out of the plates from great use), and that the existence of such differences and discrepancies was consistent with the fact that the 'C' notes were printed from the same plates from which the 'K' notes were printed, and for this purpose called as a witness,

Uzal C. Ryerson, who testified that he was in the Transfer Department of the Government Note Bureau, from February, 1863, to 1866, and was connected with that department when the seven-thirty plates of the second series were got up, and frequently saw the bed-plates, dies, and rolls used in printing that series of notes, and was familiar with the process of transferring (page 58).

The witness was then asked:

6. "Q. Do you discover any discrepancies or differences between these two notes which in your experience may not have been caused by a defect in the transfer?" The question was overruled, and the defendants' counsel excepted (page 59).

7. "Q. I now ask you to look at these two notes, 'C' and 'K;' can you state from your experience in the department, and from the knowledge of the plates there

used to print the second series of seven thirty notes, whether or not these two classes of notes, 'C' and 'K,' were printed from the same plate in different conditions, occasioned by a re-entry?" which question was excluded by the Court, and the defendants excepted (page 60).

After having shown by this witness, that a skillful transferer will be able to lay out a piece of work on two different plates in the same relative position to other parts on the plates, the witness was asked in regard to the skill and experience of the operatives in that particular branch of business in the Treasury Department to show, and an offer was made to this effect:

8. That the defects referred to by the witnesses could be traced to the unskillful manner in which the work was carried on. This testimony was excluded, and defendants' counsel excepted (page 61).

9. Defendants' counsel also offered to show by this witness (page 61) that the plates from which this second series of seven-thirty notes was printed, and the bed-plates, dies, and rolls which were used to transfer and re enter these plates, were kept in such a careless manner, and without proper precaution, that they were open to use by persons in the department, with the opportunity afforded them to use the plates, seals, presses, paper, and machines in the completion of a perfect instrument in all respects resembling the conceded genuine notes of this series.

This offer was overruled, and defendants' counsel excepted (page 61).

On the cross-examination of this witness, the plaintiffs' counsel made a motion to strike out certain portions of the testimony of the witness, and in answer to the application by defendants' counsel, what it was which the Court struck out, the answer was given, "all that general testimony about the rolls becoming defective," to which ruling defendants' counsel excepted (page 62).

George W. Tichener, a witness for defendants, testified that he had been a geometrical lathe operator for twenty-

eight years, and after having testified that he did a part of the original of the border of the seven-thirty notes, was asked these questions:

10 "Q. Does it not sometimes occur that in the process of burnishing a roll, a portion of the work on the roll becomes obliterated or erased, or in other respects changed?" which question, for the reason stated by the Court, was excluded; to which defendants' counsel excepted (page 63).

11 "Q. Can you, after an examination of these two specimen notes, 'C' and 'K,' and if so, state whether they were printed from the same plate in different conditions caused by re-entering?" (Objected to; objection sustained, and exception by defendants (page 64). After the witness had been cross-examined by the plaintiffs' counsel in regard to alleged differences between the two sets of notes and the manner in which such differences were produced, the same question was again offered and rejected (page 64).

Eaton, a witness, after having been cross-examined by the Government, and his attention called to various differences between the two notes, was asked this question (page 6):

12 "Q. Taking into consideration all the discrepancies and differences to which the District-Attorney has called your attention, and to which attention has been called on the examination, can you account for them?" which the Court excluded; to which the defendants excepted.

A juror asked the witness (Record, page 68.): "Q. In relation to the differences in the lines in the shading, did you ever know of the taking of a transfer from the same roll that would give three lines in one and six in another?" and after the witness had answered that question and a subsequent one, and was proceeding to explain, defendants' counsel asked this question:

13. "Q. In the case of a transfer of that description can you account, and if so, in what manner, for the ad-

ditional lines on one plate?" which was overruled, and excepted to.

George T. Jones, a witness for the defendants, had been an engraver for thirty odd years, and was acquainted with the process of transferring and re-entering, and all the branches of engraving and plate-printing, and after having testified that the green counters in both classes of notes were geometrical lathe-work, was asked this question:

14. "Q. Do you see anything on this green counter in these two notes which enables you to state, whether or not, excluding the figures '1000,' the two counters were made from the same original geometrical lathe bed-piece?" which was excluded, and defendants counsel excepted (page 69).

15. For the purpose, as stated to the Court, of raising the inference that a die which had been used for the purpose of making transfers of rolls would be affected by use, defendants' counsel offered to show that the same vignette of Justice (the discrepancies in the impressions of which on the two classes of notes were claimed by the Government to have been the most important, and as furnishing conclusive evidence against the defendants) had been used upon the fractional currency, and all the three series of seven-thirty notes, and the compound interest notes, and to show the amount of these issues.

This offer was overruled by the Court, and the defendants' counsel excepted. (Record, page 69.)

16. At the close of the defendants' case, plaintiffs' counsel proved by the witness Casilear that on the Monday preceding his examination he delivered the rolls in the department to the transferrer, and saw him make a transfer, and saw the printing done, and produced the proof of the engraving so made, and this engraving was offered in evidence by the plaintiffs' counsel, and received against the objection and exception of the defendants' counsel. (Record, page 73.)

At the close of the case on both sides, the defendants'

counsel requested the Court to instruct the jury in accordance with six prayers for instructions set forth in the record at pages 73, 74.

The Court charged in accordance with the first, second, and third of such requests.

The Court refused to charge in the language of the fourth request, but modified the same, as stated at page 83 of the charge, and the defendants excepted (page 84).

The Court refused to charge as asked by the fifth request (pages 73, 74), and the defendants' counsel excepted (pages 83, 84).

The Court declined to charge in accordance with the sixth request, and defendants' counsel excepted (page 84).

The Court charged (page 75) that if these notes were in fact not issued under an act of Congress, there was no authority on the part of any one to retire or redeem them. To this defendants' counsel excepted (page 75).

The Court also charged, that Congress having declared that the only notes which could be retired were those issued under an act of Congress, no other notes could be so retired. To this defendants' counsel excepted (page 75).

The Court also charged, that if in point of fact the 'C' notes were not issued by the United States, then the plaintiffs were entitled to recover. To this defendants' counsel excepted (page 83).

The Court also charged, that the act of issuing the notes was, under the statute, a physical act, and that the notes might be printed in the Department from the genuine plates, and might be all ready to issue, and yet, if they were not in fact issued, they did not come within the statute. To which the defendants' counsel excepted (page 82).

The same proposition was also charged, in different form (pages 82, 83). To which defendants' counsel excepted.

The Court also charged, that if in respect to any point

of evidence that was of a circumstantial character, any one circumstance was proved inconsistent with any theory advanced on either side in regard to either one of the two classes of notes, that theory must necessarily be regarded as unsound, and that this rule should apply to every branch of the case where the evidence was circumstantial. To this defendants' counsel excepted (page 82).

The Court also charged, that even if the notes had been received as genuine by the Assistant-Treasurer of the United States, that would not bind the United States in any manner if the notes were not in fact genuine. To which the defendants' counsel excepted (page 84).

The plaintiffs in error specify and desire to argue the following:

ERRORS.

1. That the District Court erred in refusing to charge in accordance with the sixth prayer for instructions to the jury, which was as follows:

"*Sixth.*—If the defendants honestly believed the notes in question to be genuine obligations issued by the United States, and so believing, and in good faith passed them to Mr. Van Dyck, the Assistant-Treasurer of the United States, and the latter, under the like belief, and in good faith, received the notes and paid for them, the plaintiffs are not entitled to recover, although the notes may not have been genuine obligations issued by the United States" (page 74).

In respect to which the Court charged as follows (page 84):

"I am also requested by the counsel for the defendants to charge you, that if the defendants honestly believed the notes in question to be genuine obligations issued by the United States, and so believing, and in good faith passed them to the Assistant-Treasurer of the United States, and the latter, under the like belief, and

in good faith received the notes and paid for them, the plaintiffs are not entitled to recover, although the notes may not have been genuine obligations issued by the United States. I decline so to charge" (page 84).

2. That the said Court erred in refusing to charge in accordance with the fifth prayer for instructions to the jury, above set forth:

"*Fifth.*—That in determining whether the eighteen notes in question are genuine obligations, the jury are entitled to take into consideration the fact that said notes were supposed to be genuine by the Assistant-Treasurer in New York, and passed through his hands and the hands of other officials connected with the Treasury Department" (page 73).

In respect to which the Court charged as follows:

"I am also requested by the counsel for the defendants to charge you, that 'in determining whether the eighteen notes in question are genuine obligations, the jury are entitled to take into consideration the fact that said notes were received as genuine by the Assistant-Treasurer in New York, and passed through his hands and through the hands of other officials connected with the Treasury Department.' I decline so to charge. The allegation in the declaration is, that the notes were 'supposed to be genuine' by the Assistant Treasurer and his officers. The language of the request assumes a fact which it is not for the Court to assert—that is, that the notes were 'received as genuine.' The averment of the declaration, that the notes were supposed to be genuine, is the extent to which the Court has any right to make an assumption as a matter of fact. But even if the notes were 'received as genuine' by the Assistant-Treasurer, that would not bind the Government of the United States in any manner if the notes were in fact not genuine." To this defendants' counsel excepted (pages 83, 84).

3. That the said Court erred in refusing to charge in accordance with the fourth prayer for instructions to the jury, above set forth:

"*Fourth.*—That the burden of proving that the eighteen notes in question, 'C 1 to C 18,' are not genuine obligations of the United States, rests upon the plaintiffs, and if the evidence be insufficient to establish the fact that such notes are not genuine obligations as aforesaid, the defendants are entitled to a verdict" (page 73).

In respect to which the Court charged as follows:

"Upon that question I am requested by the counsel for the defendants to charge you that 'the burden of proving that the eighteen notes in question, marked 'C 1' to 'C 18,' are not genuine obligations of the United States,' and by that must be understood obligations *issued by the United States*, 'rests upon the plaintiffs; and if the evidence be insufficient to establish the fact, that such notes are not genuine obligations,' that is, obligations *issued by* the United States, as aforesaid, 'the defendants are entitled to a verdict.' With the alteration which I have thus made in the wording of the request, I charge you that the proposition is correct" (page 83).

4. That the said Court erred in ruling, during the progress of the trial, and in the charge, that defendants below were not entitled to a verdict unless the notes in question were *actually issued* under an act of Congress, and that the act of issuing such notes was a *physical act*, and that although the notes were printed in the department from the genuine plates, and might be all ready to issue, still if they were not in fact so issued, the defendants below were not entitled to a verdict.

In respect to which points the Court charged as follows:

"If they" (that is, these treasury-notes) "were not issued under some act of Congress, they were not within

the lawful powers delegated to the Secretary of the Treasury by the act of 1866—the entire matter is regulated by statute; and if these notes were in fact not issued under an act of Congress, there was no authority on the part of the Secretary of the Treasury, or of any other officer, high or low, not even the President of the United States himself, to retire or redeem them." To this defendants' counsel excepted. "The law-making power is the omnipotent power in that respect, under the Constitution of the United States; and Congress having declared that the only notes which could be retired were those issued under an act of Congress, no other notes could be so retired." To this defendants' counsel excepted (page 75).

"I shall now pass to the other branch of the case, and that is, whether these 'C' notes were issued by the United States; because if you find that in point of fact these 'C' notes were *not issued* by the United States, then the plaintiffs are entitled to recover, provided you also find that these 'C' notes are the identical notes delivered to the Government by Jay Cooke & Co., and for which the Government gave to Jay Cooke & Co. the money alleged in the declaration." To this defendants' counsel excepted (page 77).

"As has been remarked by the District-Attorney, the ultimate question in this case is not whether the 'C' notes are spurious or genuine, or whether the 'K' notes are spurious or genuine; that is a collateral question; and the whole investigation into the question, whether the 'K' notes are genuine, and whether the 'C' notes are spurious, has been gone into as bearing upon the question whether the 'C' notes *were ever issued* by the United States" (page 78)

"The act of issuing the notes was, under the statute, a physical act."

"The notes may be printed in the Department from the genuine plates, and may be all ready to issue, and

yet, if they are not in fact issued, they do not come within the statute." To this defendants' counsel excepted (page 82).

"It is for the purpose of showing the physical act of issuing the notes, that the Government has given the testimony to which I have referred.

"The United States are not bound to redeem any notes which were not in fact issued. There is no authority to retire the notes, unless they were issued as a physical fact." To this defendants' counsel excepted (page 82).

"A determination, that such notes were printed from such genuine plates, would lead to the conclusion *prima facie*, that if such notes got into circulation in the community, they were probably issued by the Government; and thus the burden of proof would be thrown upon the Government to show that they were not issued; but, after all, the whole case comes back to the question whether the notes marked 'C' were ever issued by the Government." To this defendants' counsel excepted (page 83).

5. That the Court erred in admitting in evidence, on page 116, the 'K' notes which were claimed by the Government to be genuine, and in admitting in evidence the coupons alleged to have been attached to said notes, and to have been paid by the United States, and the evidence of Bigelow in reference thereto (page 58).

In respect to which the Court charged as follows:

"In considering the question, it undoubtedly is of assistance toward arriving at a determination whether one of two things is spurious, to be satisfied first whether the other of the two is genuine. In other words, it will assist you in determining whether or not the 'C' notes are spurious if you can determine first whether or not the 'K' notes are genuine; because you may be entirely satisfied that if the 'K' notes are genuine, the 'C' notes must be spurious. In other words, if you arrive at the

conclusion that the 'K' notes are genuine notes, it may follow, in your judgment, as a necessary conclusion, that the 'C' notes are spurious" (page 78).

"On the class of evidence which is directed to a comparison between the two sets of notes—what is to be seen in making such comparison, and what deductions are to be drawn from what is seen when the facts are presented in a clear and distinct form and collated—I shall allude to but one point. It is one which was commented upon by the District-Attorney. It has a bearing on the question, which, as I stated, you may decide to determine before approaching the subject of the issuing of the notes—the question as to whether the 'K' notes are, or are not genuine; because, if it is established to your satisfaction that the 'K' notes are genuine, you may perhaps be led the more quickly to the solution of the question as to the genuineness of the 'C' notes" (page 81).

6. That the Court erred in admitting the following evidence on the part of the United States:

1. The question to Casilear, set forth on page 6, of this brief, and there marked Nos. 1 and 2, and found on page 41, of the Record.

2. The questions set forth on page 7, of this brief, and there marked 3 and 4, and found on pages 47, 49, 50, of the Record.

7. That the Court erred in excluding the following evidence, offered on the part of the defendants below:

1. The question to Holmes, set out on page 6, of this brief, and found on page 70, of the Record.

2. The questions to Ryerson, set forth on page 8, of this brief, marked Nos. 6, 7, and found at pages 59, 60, of the Record; and the offer of

proof above set forth, on page 9, of this brief, marked Nos. 5, 8, and 9, and found on pages 60, and 61, of the Record.

3. The questions to Tichener, set forth on page 10, of this brief, marked Nos. 10 and 11, and found on pages 63, 64, of the Record.

FIRST POINT.

The Court erred in refusing to charge the jury in accordance with the sixth request—that if Jay Cooke & Co. believed the notes to be genuine obligations, and so believing, in good faith passed them to Van Dyck, the Assistant-Treasurer, and the latter in like belief received and paid for them, the plaintiffs are not entitled to recover.

This prayer involved the proposition that the debtor is presumed to know whether the obligations paid by him were genuine obligations, and that money paid by him to an innocent bona-fide holder, in discharge of an obligation purporting to be made by the debtor, cannot be recovered back.

The Circuit Court places its opinion adverse to our proposition, on two grounds: 1st, That in this case the transaction was a *purchase* of securities by the Government, and not the payment of a debt or the redemption of an obligation; and, 2d, That even if it were the latter, the authority of the Assistant-Treasurer was restricted to the redemption of genuine obligations, and that the Government was not responsible for any default or neglect of duty on his part.

I. In the first place, the transaction was not a purchase of securities by the United States, but was the redemption of its obligations. It is true that the notes were not due and payable until three years after their date, but they were, by their

terms, at their maturity convertible, at the option of the holder, into five-twenty bonds. The act of April 12, 1866 (14 U. S. Statutes at Large, page 31), which extended the application of the statute of March 3, 1865, *supra*, provided in substance that the securities issued under the last-mentioned act might be sold, and the proceeds used for "retiring treasury-notes or other obligations issued under any act of Congress." The intention of the Government, therefore, was to retire, or, in other words, to redeem the treasury-notes before they became due by their terms; the advantage to the U. S. Treasury being the difference of interest reserved by the two classes of obligations, as well as the funding of the debt for a long period. It is difficult to see how or on what principle the payment by the debtor of his debt, before its maturity, can properly be called a purchase of the debt, or of that which represents it. The note was cancelled, and could never be re-issued (this the acts of Congress prohibited), and the debt was extinguished when it was transferred to the debtor, and it was a payment—nothing more nor less.

But even if the transaction could, on any principle, be deemed a purchase for any purpose, we insist that the rule which would apply to the purchase of an obligation made by, or a debt due from a third party, has no application when the obligation or debt is that of the party himself. One may suppose a case where the party to whom payment is made by the maker of a note or other obligor or debtor, may be held to warrant his title to the instrument or chose in action or his right to receive payment; but beyond this there can be no warrantee.

The Court assumed that the defendants below, on being notified that the notes were spurious,

had every recourse to the party from whom they were originally purchased, which they would have had if the falsity of the notes had been discovered before they were presented to the Assistant-Treasurer for redemption, and therefore argued that the defendants were not injured, and must repay. This assumption is not only erroneous in fact, but even if correct would have no application, because, as will be seen at once from an examination of the cases, the rule for which we contend does not rest upon the principle of estoppel. It is deduced from the principle that it is unjust to compel the repayment of money voluntarily paid, where it was received in good faith, and the party paying had better means of information, and greater knowledge than the party receiving. Some of these notes were surrendered and redeemed as early as the 20th day of September, 1869, and the first notice given to Jay Cooke & Co. was the 13th October, 1869. So far as reclamation is concerned, many of the notes were purchased at the counter, and it was impossible to find the parties from whom they were purchased. But even if they did know from whom the notes were purchased, their chance of recovery was necessarily prejudiced by the delay on the part of the United States in giving the notice.

These notes in question were surrendered to the officer selected by the United States to receive and pay for them, and on such surrender were mutilated by the cancellation or punching out of the signature on the face of the notes, and otherwise defaced. (Record, page 91.) And the United States not only have not returned the notes, but by their own acts have rendered themselves unable to return and restore these obligations to us.

They have deprived us of the right of making

reclamation upon the parties from whom the notes (if they passed through our hands) were received.

The rule is, that the party to whom forged or counterfeit obligations are passed, must notify the party from whom they were received immediately, and must tender to him the instruments themselves.

In this case no notification was given to the defendants until three weeks after the notes were received, and the notes themselves have been defaced and mutilated.

Thomas v. Todd, 6 Hill., 340.
Kenny v. First Nat. Bk., 50 Barb., 114.
Bk. of Commerce v. Union Bk., 3 N. Y., 230.
2 Parsons on Contracts, 265.
3 Parsons on Contracts, 622, 623, notes.

II. The rules that payment made in forged notes may be treated as a nullity, and that the amount may under certain circumstances be recovered, and that there is an implied warrantee of the genuineness of instruments transferred, have no application where the notes or instruments claimed to be forged or not genuine purport to be obligations of the party receiving them, because there is a legal obligation resting upon such party to know his own obligations, and the receipt is deemed an adoption of them.

Price v. Neal, 3 Burr., 1354.
U. S. Bk. v. Bk. of Georgia, 10 Wheat., 343, 344, and cases cited above.
Levy v. Bk. of U. S., 4 Dallas, 234.
Gloucester Bk. v. Bk. of Salem, 17 Mass., 41.
Nat. Park Bk. v. Ninth Nat. Bk., 46 N. Y., 77-80, and cases cited.

Nat. Bk. of Com. v. Nat. Mech. B'king Ass'n, 55 N.Y., 213.
Weisser v. Dennison, 10 N. Y., 68.
Graves v. Am. Ex. Bk., 17 N. Y., 205.
Bk. of Commerce v. Union Bk., 3 N. Y., 230.
Canal Bk. v. Bk. of Albany, 1 Hill., 287.

In all of these cases the doctrine of Price v. Neal, 3 Burr., 1354, which is the leading case on this point, is affirmed. If these cases apply, it results that as the notes in question purported on their face to be obligations of the Government, purported to be issued under and in virtue of the act of Congress, purported to be treasury-notes of the description authorized by the act, and as the defendants sold them in good faith to the officer of the Government, believing them to be what they purported to be, and such officer purchased and paid the defendants for them in the like belief, the plaintiffs are concluded from making the inquiry whether the notes are genuine or counterfeit, and the question whether the notes were or were not in fact issued by due authority is not open; and, in either event, the plaintiffs are not entitled to recover.

III. There is no reason why the Government should not, in its dealings and transactions with the citizen, be bound by the same rules and principles which are applicable to individuals when engaged in transactions of like character. There is nothing in the act of April 12, 1866, under which the Secretary of the Treasury acted, which affects this question, unless it can be established that the Government is exempted from the application of the principle of the cases cited, because the law would imply exactly what is expressed in the statute, viz., that the redemption or conversion

must be limited to obligations for which the United States were liable, and the question is, whether the rule above referred to does apply.

This Court has decided that the Government is bound to use the same diligence in order to change the endorser of a bill of exchange as private individuals are, and it was defeated in an action to recover such a bill for neglect in giving due notice.

U. S. v. Barker, 12 Wheat., 557.
Floyd's Acceptances, 7 Wall., 666.
7 U. S. v. Bank, 15 Peters, 377.

We do not contend that the Assistant-Treasurer was authorized to receive forged notes, but we insist that he was selected by the Government for the purpose of redeeming Government obligations, and that it was a part of his duty to ascertain and determine what were or were not such obligations, and that his decision on that point is binding on the Government.

Such decision is as much binding on the United States as would be his act in delivering a note, purporting to be an obligation of the United States, in payment of a debt due by the Government, or in consideration of money paid to him at the time.

Suppose that under the statutes hereinafter referred to the Assistant-Treasurer, or other agent of the United States, had delivered one of these disputed notes to a citizen, who received it and paid his moneys for it in the belief that it was genuine, would not the Government be estopped from disputing its liability?

The rule in regard to the liability of the United States for the acts of their agents, was laid down by Judge Story (whose opinions on this point were very favorable to the Government), in these words:

"In cases of public agents the Government or other public authority is not bound, unless it manifestly appears that the agent is acting within the scope of his authority, or he is held out as having authority to do the act, or is employed in his capacity as a public agent to make the declaration or representation for the Government."

Story on Agency, 8th Ed., 307 *a*.

This is substantially the principle upon which corporations have been held responsible for acts done by their agents in excess of powers conferred on the agent, and *ultra vires* of the corporation.

N. Y. & N. H. Co. v. Schuyler, 34 N. Y., 53, 63, 66.

Farmers' Bank v. Patchen Bank, 16 N. Y., 142.

Id., 14 N. Y., 623.

In the following cases the Government was held to be bound by the decision and judgment of the officer whose duty it was to exercise his judgment and discretion.

Martin v. Mott, 12 Wheat., 19–31, where the Court says:

"Whenever a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of those facts."

See also Allen v. Blunt, 3 Story C. C., 742.

Gould v. Hammond, 1 McAllis, 235.

Kendall v. Stokes, 3 How., U. S., 87.

The Court of Claims has decided that the Government is bound by the rule that a forfeiture may be waived.

Douglass v. U. S., 2 Nott. & H., 347.

Lester v. U. S., 1 id., 52.

And that the Government is also bound by the rule that the ratification of an unauthorized contract is equivalent to original *authority*.

Fremont Case, 2 Nott. & H., 461.
Burke's Case, id., 180.
Wiggins Case, 3 id., 412.

IV. The rules which limit the liability of the Government for the acts of its agents in ordinary transactions are not applicable to the present case.

The nature and extent of the financial transactions of the Government, in the course of which the matters in controversy arose, and the protection of the citizen who dealt with it on the faith of its accountability for the acts of the agents through whose instrumentality immense sums of money were furnished to the United States, render it necessary that such accountability should be enforced.

Under the act of September 2, 1789, which created the Treasury Department, the Treasurer was authorized to do but two things: 1. to receive moneys; 2. to disburse them. By the act of August 6, 1846, sub-treasuries were created, which were declared to be treasuries of the United States, and the Assistant or Sub-Treasurer was authorized to perform all the duties of Treasurer, and their offices were made branches of the Treasury. All public moneys were required to be deposited with the Assistant-Treasurer, and the disbursing officers were authorized to draw on him.

Act Sept. 2, 1789, 1 U. S. Stat., 65.
Act Aug. 6, 1846, 4 id., 59, 60.

Prior to 1861 all Government obligations were issued at Washington, and under the immediate direction of the U. S. Treasurer, and various precautions against the possible forgery or counterfeiting of such instruments were taken, all of

which were removed by the acts of July 17, 1861 (12 U. S. Stat., 259), and subsequent acts.

By this and subsequent acts the United States were authorized to borrow moneys and to issue obligations for their payment of such moneys, and also to use obligations pledging the credit of the United States for the payment of debts and existing liabilities (§ 1). And the United States were authorized to open books for subscription, and to employ AGENTS to aid in procuring the loan, and the Assistant-Treasurer, *postmasters* in the different cities and towns, *and other persons, became such agents* (§ 3). And the Secretary was authorized to prescribe such rules and regulations as he might deem expedient to effect the great object, which was to procure a loan of money from the people, and by the 9th section the faith of the United States was solemnly pledged for the redemption and payment of the loan, principal and interest.

Act 17 July, 1861, 12 U. S. Stat., 259.
Act 25 Feb. 1862, id., 345.
Act 11 July, 1862, id., 532.
Act 3 March, 1863, id., 709.

By subsequent statutes greater powers and larger discretion were given to the head of the Treasury, and the obligations were no longer to have the signature of the officers entrusted with their issue made by themselves or an agent; but the instruments were to be printed, and when they came from press were to be perfect and complete obligations.

Act 30 June, 1864, 13 U. S. Stat., 214.
Act 3 March, 1865, id., 468.

These 7-30 notes were made legal tenders, and convertible into 5-20 or 10-40 bonds (§ 8), and the Secretary was authorized to issue instructions,

rules and regulations to the collectors, receivers, * * and others, who may receive treasury-notes or other securities on behalf of the United States, or who are employed in the preparation or issue of the same (§ 8).

Act 30 June, 1864, 13 U. S. Stat., 214

The act of April 12, 1866, which provides for the redemption of these notes, is an amendment of the act of March 3, 1865 (13 U. S. Stat., 468), and provided for their conversion into other obligations of the United States, or for their payment out of the proceeds of other obligations.

14 U. S. Stat., p. 31.

Considering these various and extended transactions, in which the United States in effect and practically carried on the business of banking, and employed the services, not only of public officers, but of private individuals, we are entitled to claim that in the transactions in question the principle for which we contend should be applied to the United States.

The learned Circuit Judge, in the opinion in this cause, while discussing another point, says:

"It has been said, with what I deem just accuracy, that when the Government engages in the making and negotiation of commercial paper, it submits itself to the settled rules of commercial law, and in that respect stands before the courts of law (whenever jurisdiction is properly obtained, as is the case when the Government is plaintiff), to receive the application of those rules precisely as they would be applied to an individual." Citing, The Floyd Acceptances (7 Wall., 606, 675), Davis v. Gray (16 Wall., 202, 232), and other authorities which apply to the question now under discussion, and to which the attention of the Court is called. (Record, page 110)

SECOND POINT.

The District Court erred in ruling that the only notes which could be retired under the act of April 12th, 1866, were those actually issued by the United States; —that the act of issuing the notes was a physical act,— and that the notes in question might have been printed from the genuine plates in the Department, and might be all ready to issue, and yet if they were not in fact issued they did not come within the statute, and defendants must fail (page 82).

This was the ruling of the Court in respect to the fourth and fifth requests, and in other parts of the charge. Under this point we shall consider the matters, secondly, thirdly, and fourthly, assigned for error (ante, pages 15, 16, 17 of this brief).

I. As has been before stated under the acts of 1864 and 1865, in pursuance of which 7-30 notes were issued, these instruments no longer required the signature of any officer. When they came from the press and when they passed from the hands of the individuals under whose superintendence they were prepared, they were perfect and completed instruments which did not bear upon the face, or any other part of the instrument, any mark produced by or requiring any mental action on the part of a single human being, and their entire preparation, including signatures, letters, numbers, and every other part of the instrument, was by machinery, so that there was no safeguard or protection for the party to whom such instruments might come, and no ear-mark or guide by which the most skillful could detect any difference between those which the Government chose to treat as genuine, and those which they chose to treat as simulated.

The learned Circuit Judge, in his opinion (Rec-

ord, pages 109, 110), showed very clearly what his views were upon the question of the liability of the United States to *bona-fide* holders of such notes so printed and prepared, even though they were put in circulation through the fraud and default of the Government officers. The language of the opinion is as follows:

"The acts of Congress provided for the making and issue of many hundred millions of dollars in such notes, and in small amounts, adapted to the capacity of our humblest citizens, whose patriotism might prompt them to lend their money thereon or to receive them in course of negotiation, and thus aid the Government in its exigency. They were negotiated, and the form and nature of the transaction shows that it was the hope and intent of the acts of Congress that they should be negotiated throughout the whole of our loyal territory, and in every town and village in its remotest sections.

"It may be asked, therefore, with great pertinency and force, was it intended that every one who took such notes should first inquire, not alone whether they were made by printing from the Government plates and stamps, and sealed with the Treasury seal, and bear on their face all the genuine marks and evidence of lawful issue which the acts of Congress prescribed, but also, and further, did the Secretary or some one authorized by him issue them as a 'physical act?' Is such a requirement according to legal principles just and reasonable, to constitute the holder a *bona-fide* holder? And, if not so issued, is there no legal obligation binding the Government to their payment?" (Record, pages 109, 110.)

The learned judge, after remarking that if the notes had been surreptitiously or fraudulently

printed from the Government presses, the United States might not be liable, proceeds to say:

"Be this as it may, when the Government has not only prepared the instruments, but has authorized the making of the paper, and it is actually made (printed, numbered, stamped, and sealed), bearing all the marks of genuineness prescribed by law, and is thus in existence, in the keeping of the Secretary of the Treasuny or his subordinate agents, the question may, perhaps, present a different aspect. If fraudulently or feloniously abstracted and negotiated, do the notes constitute valid, legal obligations in the hands of innocent persons receiving them for value without notice?" (Record, page 110.)

"Such completed paper, in the actual possession of the Secretary of the Treasury, may be likened to notes complete in form, and signed by an individual, and locked in his desk. In the latter case, is it doubtful t at if the notes be fraudulently or feloniously abstracted from the desk, and be negotiated so that they come to the hands of an innocent person who gives value therefor before maturity without notice, the signer is bound, by the settled rules of commercial law, to pay them? * * * If a bank, issuing bills for circulation, should resort to the like mode of making bills which was adopted by the Government, and the names of its officers, purporting to be signed to the bills, were in fact fac-similies in lithograph, it would not be doubted that the bank was bound to redeem such bills. If such bill were fraudulently obtained from the bank vaults, and put into circulation, the obligation of the bank to pay them would be no less clear.

"In this respect, is there any difference in the question of liability when the paper is a negotiable note payable in the future, intended not for cir-

culation as money, but for negotiation in the course of business, for loans or otherwise?"

This Court has repeatedly held that Government obligations, and especially seven-thirty notes, have all the peculiarities and qualities of commercial paper, and within the class of negotiable instruments, and that the rules of law applicable to the latter apply to such Government obligations.

Mercer County v. Hackett, 1 Wall., 83–95.
Murray v. Lardner, 2 id., 110.
Thomson v. Lee Co., 3 id., 327.
U. S. v. Vermilye & Co. (decided at the present term of this Court).

The liability upon such securities, under the circumstances referred to by the learned Circuit Judge, is the necessary result of the principles laid down in the leading case of Miller v. Race (1 Burrows, 432), 1 Smith, Leading cases, p. 597, 609, and was directly decided in Ingham v. Primrose (7 Com. Bench, N. S., 82), where the acceptance was torn in two, and thrown away, with the intention of destroying it; but it was subsequently picked up, and pasted together, and negotiated. The Court say:

"It is, we think, settled in law," said Williams, J., "that if the defendant had drawn a check, and before he had issued it he had lost it, or it had been stolen from him, and it had afterwards found its way into the hands of a holder for value without notice, who had sued the defendant upon it, he would have had no answer to the action. So, if he had endorsed in blank a bill payable to his, order, and it had been lost or stolen before he delivered it to any one as endorsee. (See the judgment in Marston v. Allen, 8 M. & W., 494.) The reason is that such negotiable instruments have, by the law merchant, become part of the mercantile currency of the country, and in order

that this may not be impeded, it is requisite that innocent holders for value should have a right to enforce payment of them against those who, by making them, have caused them to be apparently a part of such currency."

Referring the Court to the opinion of the Court below, and to the authorities there cited, I will only add that the case is much strengthened by the fact that under the acts authorizing the issue of these notes, the Treasurer of the United States was vested with increased powers; that he was authorized to borrow money on the credit of the United States, and that he was authorized to issue notes and bonds (Section 1); that he was authorized to open subscription books, and to employ agents to aid in negotiating these securities; and that the Assistant-Treasurer, post-masters in different cities, and other persons, became such agents.

Act July 17, 1861, (12 U. S. Stat., 259).
See also the subsequent statutes of—
25th February, 1862, id., 345,
11th July, 1862, id., 532,
3d March, 1863, id., 709;
And the later statutes of—
30th June, 1864, 13 id., 214,
3d March, 1868, id., 468.

II. The Circuit Court, however, though evidently of the opinion that the U. S. would have been liable to the defendants in this action at the maturity of the notes, and that the amount could then have been recovered, took the position that under the act of April 12, 1866, the case was different, and that although the United States were so liable, still that the act in question limited the authority of the Assistant-Treasurer to the redemption of notes actually issued by the United States, and

that the charge of the District Court was therefore correct.

Here again it is quite evident that the views of the Court were in favor of the defendants below, and in this as well as in other points it rendered judgment in opposition to its own opinion, so that the question involved should be determined by this Court. (See page 112, of the Opinion.)

The learned judge has, in his opinion under the phrase "It may plausibly at least be suggested" (page 113), condensed the arguments made by us on this point, and we beg leave to refer to what is there said to support our propositions. (Record, page 113.)

It seems to us clear that the object of the act of April 12th, 1866, was to enable the United States to substitute five-twenty bonds for seven-thirty notes or other obligations, and thereby to get the benefit of an extension of time and a diminished rate of interest;—that the phrase, "issued under any act of Congress," was not intended to create a distinction between those which were and those which were not so issued,—but that these words were used so as not to confine the redemption to treasury-notes, but to extend it to all other obligations of the United States;—that there was no intention to make any such discrimination;—that these terms embrace all instruments purporting to be and in effect seven-thirty notes or other obligations for or in respect to which the United States are liable, and that if the United States were liable on these instruments in question, then that they were within the purview of the act, and that under the circumstances such instruments were in fact issued by the United States.

THIRD POINT.

The District Court erred in admitting in evidence, on page 116, the 'K' notes, which were claimed by the United States to have been genuine, and to have been actually issued by it; and in admitting in evidence the coupons claimed to have been attached thereto and paid; and the evidence of Bigelow, at page 116, that he found the coupons for the 'K' notes, but could not find any for the 'C' notes in suit.

All this evidence was immaterial and irrelevant to the issue in the cause, which was whether the 'C' notes in controversy had been made or issued by the United States. This issue was to be determined by the evidence bearing directly on that point, and in the same way as if the 'K' notes had never been in existence. The fact that the 'K' notes were genuine notes, did not tend to prove that the 'C' notes were not genuine, and even if it did, it was the introduction of a collateral issue—to wit, the genuineness of the 'K' notes, which compelled the defendants below to establish that the 'K' notes were not genuine, and were not issued by the Government.

The reasoning of the Court seems to have been, that if the 'K' notes were genuine and issued, then that the 'C' notes were not genuine, and were not issued.

This proposition, we submit, was erroneous, but even if correct, plaintiffs' counsel had no right to call upon the defendants to do anything more than to litigate the genuineness of the 'C' notes.

As to the coupons: upon what principle were they admissible? Neither the fact that they were found or had been paid bore upon the issue whether the 'C' notes in suit were or were not genuine obligations of the United States. If the United States, either by mistake or intentionally, paid the coupons on the 'K' notes, this did not prove that they were not liable on the 'C' notes.

The payment of the coupons might conclude the Government as to the holder of the 'K' notes, but the fact that the United States chose arbitrarily to recognize one set of notes as genuine could not in any way affect the issue as to the genuineness of the notes in suit. The influence which the evidence relating to the 'K' notes and the coupons had upon the jury may be seen from the portions of the charge at pages 78, 81, 83 of Record, which are set out on pages 17, 18 of this brief.

FOURTH POINT.

The District Court erred in admitting the questions at page 41 of Record put to Casilear, and those at pages 47, 49, 50 of Record put to Cooper, and in excluding the questions put to Ryerson at pages 59, 60, and to Tichener at pages 63, 64. These questions are found on page 18 of this brief.

The Court allowed Casilear, the plaintiffs' witness, to testify that the eighteen 'C' notes were not printed from the genuine plates (page 41); and allowed Cooper to testify that the die engraved for the genuine seal could not have produced the seal on the 'C' notes (page 47): and allowed the same witness to testify that he never knew a note like the 'C' note to be printed from the plates from which the 'K' notes were taken (page 49). All this testimony was objectionable, for the reason that it called upon the witness to testify to the very fact which it was the province of the jury to determine. If, however, it was properly admitted, then surely the Court erred in excluding the questions put by us to Ryerson and Tichener, the object of which was to disprove the plaintiffs' evidence above referred to, and to show that the 'C' notes could have been prepared from the 'K' notes in different conditions, occasioned by defect in re-entering (page 64), and that some of the defects pointed out by plaintiffs' witnesses were occasioned by an injury

to the roll (page 63). In this connection, the Court is also referred to the evidence excluded at page 68 and at page 69. The plates from which the 'K' notes were claimed to have been printed, were not in existence, and of course could not be produced. The Government proved that the 'K' notes were printed from the genuine plates, and that the 'C' notes could not be. In the view taken by the Court, this became a matter of opinion, and if the United States were entitled to introduce testimony tending to show that the 'C' notes could not have been produced from the original plates, we have a right to show that they could, and to prove the facts on which our witnesses based their opinions.

The questions put to Ryerson (at page 59) were substantially whether from his experience in the department, and knowledge of the plates used to print the second series of seven-thirty notes, the witness could say that the two classes of note 'C' and 'K' were or were not printed from the same plate.

It had been proved that this witness Ryerson was in the transfer department of the Government at the time the seven-thirty notes were issued, and that his duties were to get up bed-pieces and tranfer plates, and make new work, and that he was familiar with the process of transferring. He stated the effect of the constant use of plates and the object of re-entering, and what was meant by the terms "doubled" and "mashed," and spoke of scraping out defective parts from the plate, and sometimes hammering the plate and rolling it anew, and stated that the rolls sometimes wear out and work less distinct by use and repeated transfers, and where this is done a new roll is made. It was proposed to prove by the witness (at pages 58 and 59), that the new roll was made from a bed-plate, and that there were many bed-plates, and of course that there was a possibility of differences and discrepancies between impressions from the same plate, owing to the fact that a plate might become worn, and that in re-entering, that is, renovating it by

means of the roll, changes in the plate might be made. In addition, such difference might arise from the fact that the plate might not be re-entered or renovated by the same roll which was used in making the original plate, but that a different roll might be used for that purpose, and that in some cases such re-entry was made by a roll which came, not from the same, but from another bed-plate, All this testimony bore upon the issue raised by the plaintiffs on the testimony of their own witnesses, that these 'C' notes could not be printed from the plates from which any of the seven thirty notes of the second series were printed.

To the objection of the Court, that the defendants could not show what might be done, at page 59, and the like objection, at page 60, that the defendants must show that, in point of fact, that plate was used to print these 'C' notes, and what the condition of such plate was, we answer, that the testimony offered was that of an expert, and was as free from such objection, and certainly as unobjectionable as the testimony which the plaintiffs were permitted to introduce against the exception of the defendants, at page 41, where the witness Casilear was allowed to give his opinion as to whether the two classes of notes were printed from the same plates or not, and as the testimony of Cooper, at pages 47, 49, 50, who was allowed to testify whether a die which he had engraved could have produced a certain seal, and whether he ever knew of the production of notes like the 'C' note, from a plate on which the 'K' notes were printed.

The question offered at page 63, "Q. Does it not sometimes occur, that in the process of burnishing a roll, a portion of the work on the roll becomes obliterated and erased, or in other respects, changed?" was proper.

Plaintiffs' witness had already testified that on one set of notes some parts of the figures and some lines were wanting, which parts and lines were found on the other notes, and in order to account for this discrepancy the defendants offered to show that in this process of burn-

ishing a part of the work became obliterated or erased, or changed, which would necessarily alter the plate, and thus account for the change in the character of the impression.

One of the points of difference between the 'K' and 'C' relied upon by the United States, was in the vignette of justice, which was the prominent figure on the note. After having shown or offered to show that the differences in the two sets of notes were caused by difference in the condition of the plates, was it not proper for us to show to what extent the vignette of Justice had been used on Government obligations, so as to raise the inference that the die employed must have been effected by frequent use? So also in order to guard against any argument which might be advanced that it was impracticable that access could be had to the Government presses, paper, dies and seals, and other machinery for making a perfect note, it was material and proper for us to prove what we offered at page 61 that the plates, bed-plates, dies, and rolls were open to use by individuals in the department with abundant opportunity to use them in the completion of a perfect seven-thirty note. There was much other evidence of a similar character excluded, but it will be unnecessary to refer to it particularly. It seems to us that the defendants below were placed at great disadvantage by reason of the rejection of the evidence offered on the part of the defendants.

FIFTH POINT.

The Court erred in excluding the defendants' offer to prove by Philip W. Holmes, at folio 492, that the letters introduced in evidence from the defendants' letter-book were written by the witness and sent by him, and that in so doing he acted on the information derived from the Sub-Treasurer without knowing anything about the identity of the notes or the fact of their genuineness.

The letters had been received in evidence as admissions by Jay Cooke & Co. that these identical notes had been transferred by them to the Assistant-Treasurer of New York.

It was certainly proper to allow the defendants to show that the statements in the letters were made in reliance upon what the agent of the Government had told them, and without any personal knowledge of the facts. (Record, page 70.)

Heane v. Rogers, 9 B. & C., 577.

In disposing of this question, the Court will bear in mind that, up to the introduction of these letters, there was an absence of any competent testimony tending to connect the defendants with the 'C' notes alleged to have been transferred to the plaintiffs. The notes themselves bore no endorsement or other mark thereon affixed by the defendants. The similarity between the stamp impressed, or alleged to have been impressed upon these notes, and that used by Jay Cooke & Co. in the ordinary transactions of their business, from the facility with which a counterfeit stamp might be prepared and used, and the very nature of the act claimed to be that of the defendants in stamping the notes, rendered the evidence to connect defendants with these notes of so weak and unreliable a character as not to be competent for the purpose, and not proper to be submitted to a jury. It cannot be denied that the letters which the defendants offered to explain constituted the evidence upon which the jury found that the 'C' notes had passed through the hands of the defendants.

SIXTH POINT.

The judgment should be reversed.

JOHN E. BURRILL.

Of Counsel for Plaintiffs in Error.

Of December Term, 1874 No. 527.

Supreme Court of the United States.

ON WRIT OF ERROR TO THE CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

JAY COOKE et al.,
PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES,
DEFENDANT IN ERROR.

Additional Brief of Argument on behalf of Plaintiffs in Error.

R. L. ASHHURST,
JOHN C. BULLITT,
Of Counsel with Plaintiffs in Error.

PHILADELPHIA:
ALLEN, LANE & SCOTT, PRINTERS, 233 SOUTH FIFTH STREET.
1875.

Supreme Court of the United States.

JAY COOKE *et al.*, Plaintiffs in Error, *vs.* THE UNITED STATES, Defendant in Error.	On Writ of Error to Circuit Court for the Southern District of New York. No. 527.

ADDITIONAL BRIEF OF ARGUMENT ON BEHALF OF PLAINTIFFS IN ERROR.

This case was an action of *assumpsit* for money had and received, brought by the United States against the firm of Jay Cooke & Co., for the recovery of the price paid for the purchase or redemption of eighteen notes, purporting to be United States seven-thirty treasury notes for $1000 each, alleged to have been sold to the United States by Jay Cooke & Co., and which it was alleged by the United States were not genuine notes.

The questions arising in this case may be essentially reduced to three general heads, on the decision of which the case below turned, and under which the various points arising under the charge of Judge Blatchford and decision of Judge Woodruff may be grouped.

I.

The first head includes the questions of fact raised as to which the onus was cast on the United States of proving that the eighteen seven-thirty notes produced in court, and marked and treated as the C. notes, were the actual notes sold to the United States by Jay Cooke & Co.

II.

The second head is the question whether the C. notes, if proved to be the actual notes sold to the United States by Jay Cooke & Co., were or were not genuine or binding obligations of the United States.

III.

And, third, the final question is as to the effect of the purchase and acceptance of these notes, supposing them proved to be false and forged, by the officers of the United States treasury, their cancelation by punching, and the delay for twenty-two days to notify Jay Cooke & Co. of their being forged, &c., and whether the United States can, after these circumstances, recover the price paid for said notes on this action.

It is perfectly clear that failure on any of these points is fatal to the plaintiff's right of recovery; and if we can show that the jury was misdirected on either of these questions, or that substantial error was committed in the admission or exclusion of material evidence on either of these questions, we are entitled to a reversal.

I.

As to the first point, the establishment of the identity of the C. notes with the notes purchased of Jay Cooke

& Co. On this point we have not directly to complain of the charge of the court, for Judge Blatchford rightly charged the jury that the burden of proving the identity of the notes was on the United States, and left the question to them; but we have reason to complain of the treatment of the evidence under this head. And we contend—

(1.) The learned judge erred in excluding the evidence of Philip W. Holmes, as complained of in our first point in Circuit Court. The offer was to prove by Philip W. Holmes (see record, folio 70) that the various letters introduced in evidence from the letter-book of Jay Cooke & Co. were written or drafted by the witness, and sent by him, acting on the information derived from the sub-treasurer, that the statement in reference to the notes being counterfeits was correct, without knowing himself anything about the identity of the notes.

These letters were not to the United States, nor any officer of the United States, but to third parties. They were, therefore, and could only have the effect of, simple admissions and in no respect have the effect of an estoppel, and it is difficult to see how such admissions to third parties, especially when made by an agent only, could not be susceptible of explanation. Had the evidence been regularly introduced, it would have been by calling the parties receiving the letters and producing from them those letters. The letters would have had merely the effect of a parol admission, and could, of course, be explained. Such a letter would not be a document or writing in any sense that could not be altered by parol, since it had in no respect any similitude to a contract. If the originals could have been explained so as to destroy the effect of the admission supposed to be contained in them, certainly the letter-press copies could be equally.

In Greenleaf on Evidence, vol. 1, § 204, the rule of estoppel is laid down as follows:—

"It is to be observed that estoppels bind parties and privies, but not strangers. Hence it follows that though a stranger may often show matter in evidence which parties or privies might have specially pleaded by way of estoppel, yet in his case it is only matter of evidence to be considered by the jury."

Mr. Justice Bayley, in delivering the opinion of the Court of King's Bench in the case of Heane *vs.* Rogers, 9 B. & C., 577, says:—

"There is no doubt but that the express admission of a party to the suit or admissions implied from his conduct are evidence, and strong evidence, against him; but we think that he is at liberty to prove that such admissions were mistaken or were untrue, and is not estopped or concluded by them unless another person has been induced by them to alter his condition. In such a case the party is estopped from disputing their truth with respect to that person and those claiming under him and that transaction, but as to third persons he is not bound."

This exposition of the law has been repeatedly reaffirmed and adopted in many subsequent cases and by standard writers; and Greenleaf, vol. 1, section 211, applies the same rule to cases of admissions in *deeds* and like solemn instruments.

But the admission in this case was *merely in a letter* to a third party, and therefore of no more weight than a verbal admission.

In Newton *vs.* Belcher, 12 A. & E., 921, the defendant's admission of liability, contained in a circular letter in which he had joined, was held not to conclude him, but the jury were to take into consideration the circumstances under which it was made.

Admissions of this character are said by Greenleaf (vol. 1, sections 209–212) not to be conclusive even when made to the party setting them up, unless he acted thereon or was prejudiced thereby.

So it has been held in numerous cases that a receipt is not conclusive, but evidence may be given to explain or contradict it.

Skaife *vs.* Jackson, 3 B. & C., 421.
Graves *vs.* Key, 3 B. & A., 313.

Even an acknowledgment in a deed of receipt of consideration money does not estop the grantor in an action therefor.

Wilkinson *vs.* Scott, 17 Mass., 257.

And a solemn judicial admission may be relieved against when made imprudently and by mistake.

Greenleaf, vol. 1, section 206.

And this is no trivial objection, since the identification of these notes essentially depended on these admissions, and without them would have been very defective. In any event, we were entitled to have the explanation go with the admission.

(2.) We complain, with reason, of the admission of the books of the Treasury Department of the United States to prove the identity of the notes, as specified in the second point in argument to the Circuit Court. The private books of no individual would be evidence for him in such a case, against one not privy to the entries, and it is hard to see how, in an action of this nature, the books of the United States stand on any different footing. (Printed testimony, page 221, *et seq.*)

It has been held that the books of a corporation are not evidence for the corporation against a stranger.

London *vs.* Lynn, 1 H. Black, 214, note C.
Commonwealth *vs.* Woelper, 3 Sergt. & Rawle, 31.

So entries by a clerk in corporation books are not evidence for corporation.

Jackson *vs.* Walsh, 3 Johns, 226.

The rule is stated generally by Greenleaf.

Greenleaf, vol. 1, section 493.

(3.) There was also evident error in admission of the letter-press schedule of Exhibit J, (printed testimony, page 261, *et seq.*,) of list of notes transmitted from Washington to New York, as complained of in our third point in Circuit Court. It was not proved that any one compared the list,—the writer was not produced nor his name mentioned. No one spoke with any such recollection or knowledge of its contents. Meloy, the only witness as to it, said he only supposed he compared it, because it was his usual practice.

If these rulings were corrected, the evidence for plaintiffs under the first head, which lay as foundation of this case, would very probably have been found by the jury insufficient to justify a verdict.

II.

The second leading head of our case, which should next be considered in logical order, embraces the question whether or not the instruments in controversy, supposing them to have been duly proved to have been purchased from Jay Cooke & Co. by the United States, were, when so purchased, binding obligations of the United States. Under this head, we contend that the charge of the learned judge of the District Court, as well as his rulings on the evidence, was erroneous, and damaging to the defendants below. In the principles which, at the outset of the trial, the court announced should govern the case, and under which he decided all questions of the admission or exclusion of evidence, the judge laid down (1) that the assistant treasurer had no authority to use the money of the United States in receiving or retiring any obligations not actually issued by the United States, and (4) that the plaintiffs in said suit had a right to recover back any money paid to the defendants as the consideration for supposed treasury notes not issued, in fact, by the United States; and in his charge to the jury, in answer to the fourth point submitted

by the counsel for defendants, asking an instruction that if the evidence was insufficient to establish the fact that such notes were not genuine obligations the defendants were entitled to a verdict, he qualified his affirmance of the instruction by saying, "by genuine obligations of the United States must be understood obligations issued by the United States;" and again, in said charge, the judge said, "the act of issuing the notes was, under the statute, a physical act. The notes may be printed in the department, with the genuine plates, and may be all ready to issue, and yet, if they are not in fact issued, they do not come within the statute." And again, "the United States are not bound to redeem any notes which were not in fact issued. There is no authority to retire the notes unless they were issued as a physical act." We complain here that the question left to the jury, instead of being a question whether or not these notes were forgeries or spurious paper, was a much narrower one, viz., whether the United States had, as a physical act, issued this paper.

Now, in the first place, this question is one so vague as hardly to admit of being satisfactorily submitted as a question of fact. What is a physical act of issuing paper? The description of notes in question are completely executed by machinery and stamps, and are complete without the actual signature of any officer. When could such a note be said to be issued as a physical act, and when not? What officer could be said to have the authority to make such issue as a physical act? Probably the Secretary of the Treasury personally might, as a physical act, issue a particular note; but if anything other or less than such an issue by the Secretary's own hands is sufficient, and, of course, it is simply absurd to suppose such a physical handling as necessary, would not the meaning of this instruction be that no note could be treated as actually issued unless the United States received a consideration for it? For, certainly, if a subordinate issued or disposed of such notes in fraud of the United States, it might well be asserted that as a physical act these notes had

never been issued by the United States. If this principle is to be laid down as law, there will be seen to be no safety whatever for the citizen in dealing with obligations purporting to be those of the United States, since he would be obliged, no matter how or under what circumstances he purchased, to ascertain either that the notes had been actually physically issued by the Secretary of the Treasury, or that the United States had received the money originally paid for them. This necessarily follows, from the conclusion of the court, that the genuineness of the notes does not depend upon their being printed from the genuine plates, and being perfect and complete instruments indistinguishable from other obligations of the United States, but upon the obscure question whether or not the notes were, as a matter of physical fact, issued by the United States. On this point we might almost safely adopt as our argument the opinion of the learned judge of the Circuit Court, whose own convictions seem clearly in favor of reversal for misdirection on this ground, although he affirmed the judgment in order that the more speedy determination by the court of last review might be arrived at.

The questions of the evidence received and excluded were decided on the same principle as the charge, as above mentioned, and a vast amount of evidence for defendants excluded, which tended to show that the notes in question have been, or might have been, printed from genuine plates, and further to show such careless keeping and watch over such plates as made the surreptitious issue of notes printed therefrom a matter easily accomplished. We will not here particularize these matters of evidence, as they will be fully set out in the other brief for defendants. (Page 36, *et seq.*) Neither will we go here into the question, fully set forth in our colleague's brief, of the injustice done to defendants below by the giving and receiving in evidence notes known as the K. notes, the genuineness of which being inferred or asserted, the defendants were called upon to meet the question, really irrelevant, viz., the question not merely of the spuriousness

of the C. notes, or those in controversy, but of the genuineness of the K. notes, which were disconnected with the transaction.

As stated above, we might almost rest this portion of our case upon the opinion of the learned circuit judge. In the cases cited by him on the question, he lays down in clear language the principle, which cannot be controverted, that when the Government engages in the making and negotiation of paper it is bound by the same rules of commercial law as an individual or corporation.

And it cannot be doubted;

1. That such notes as these are to be treated as governed by the rules of commercial paper, and virtually constitute, although under seal, a portion of the currency of the country. This has been well settled since the case of the Prussian bonds, Wookey *vs.* Pole, 4 Barn. & Ald. 1; Gorgier *vs.* Mieville, 3 Barnwell & Cresswell, 45.

   And in a great number of cases decided in this court, the law has been settled for the United States for all purposes that in the hands of *bona fide* holders, for value, coupon bonds stand in the same position as promissory or bank notes. Special attention, however, may be called, in this connection, to the case of the Commissioners *vs.* Aspinwall, 22 Howard, 365,—the case of a suit on coupons of county bonds issued for a railroad subscription, where a defense was made that the act authorizing the subscription directed its submission to popular vote in a certain form, and that no notice of the election was given as required by the act,—where the court held that the act having authorized the issue, and the bonds being issued by the proper authority, purporting to be issued in compliance with the law, the purchaser was not bound to look further.

   And in the case of Lynd *vs.* The County, 16 Wallace, 13, the law authorizing the county judge to issue bonds

when the voters of the county had given the required sanction, the execution and issue of bonds, setting forth on their face that they had received the popular sanction, was held as conclusive evidence in favor of the *bona fide* holder of the bonds that such sanction had actually been given. The decision of St. Joseph Township *vs.* Rogers, 16 Wallace, 665, is to the same effect.

In Mercer County *vs.* Hacket, 1 Wallace, 83, it was held that limitations as to the issue of county bonds could not avail against a *bona fide* holder, if they do not appear on the face of the bonds, and to the same effect was Gelpcke *vs.* Dubuque, 1 Wallace, 176; Bissell *vs.* City of Jeffersonville, 24 Howard, 290.

And in the case of the bonds of the State of Illinois, —State of Illinois *vs.* Delafield, 8 Paige, 527; (S. C., 2 Hill, 159,)—it was held the State would be bound by bonds, although illegally issued, in the hands of the *bona fide* holder.

2. Now, as to negotiable paper the law is perfectly clear, as Judge Woodruff admits, that if the paper is not a forgery—if it be a genuine instrument, no matter from what circumstances it takes its origin—it is binding in the hands of a *bona fide* holder. Cases innumerable lay down the rule that the only effect of proving that negotiable paper owed its issue and circulation to fraud, felony, or force, will be to put the holder on proof of the value he gave for it. This principle is recognized by the learned judge of the Circuit Court in his opinion. A few cases may be added showing the extent to which the rule is carried. Chief Justice Eyre, in Collins *vs.* Martin, 1 Bos. & Pul., 651, held that every holder with the bills takes the property and his title stamped upon them, and that with regard to bills, property and possession are inseparable, and that no evidence of want of consideration or other ground can impeach the apparent value received in the hands of a *bona fide* holder.

Duncan *vs.* Scott, 1 Campbell, 100, was the case of a man who, while his ship was in port at San Domingo, was compelled, by duress and threat of immediate murder, to draw a bill on London. Lord Ellenborough held that the effect of proof of this fact was to put the holder on proof of value.

Ingham *vs.* Primrose, 28 L. J. C. P., 294, was the case of a bill accepted and given to the drawer to negotiate for acceptor's benefit. The drawer was unable to get it discounted, and returned it to the acceptor, who tore it in two and threw the fragments in the street. The drawer picked up the pieces, pasted them together, and negotiated the bill. In the hands of a *bona fide* holder for value, this bill was held to bind the acceptor. Here, clearly, there never had been any issue whatever of the acceptance as a physical act.

So in a case in Massachusetts, a note placed by the maker in the hands of another to be held in escrow and delivered under certain contingencies, where these instructions were violated and the note delivered absolutely to the payee, it was still held binding in the hands of a *bona fide* holder. Fearing *vs.* Clark, 16 Gray, 74. In New York, a similar decision was made as to a note fraudulently negotiated by one who held it in escrow, in Vallett *vs.* Parker, 6 Wendell, 615.

Lord Mansfield broadly laid down, in Peacock *vs.* Rhodes, 2 Douglass, 633, in the case of a stolen bill:— "The law is settled that a holder who comes fairly by a bill or note has nothing whatever to do with the transaction between the original parties." It is recognized in pleading that the delivery of a bill or note need not be averred in the declaration, because the making of the acceptance or endorsement respectively are held to include delivery.

Chitty on Bills, 195.

Bank *vs.* Neal was a case decided in this court, and

is reported in 22 Howard, 100. There, four firsts and four seconds of exchange were accepted by defendant, with the dates, amounts, and names of drawers blank to the order of A., and sent to A. by the defendant to be negotiated. A. negotiated all the firsts, which were duly taken up by defendant. Afterwards A. negotiated two of the seconds, filling in dates and amounts, which did not correspond with any of the firsts, and these passed into the hands of the *bona fide* holder. It was held that he could recover from the defendant. Here, clearly, as to the seconds thus fraudulently used as firsts, there never was anything that could be called an issue as a physical fact.

McLaughlin *vs.* Commonwealth, 4 Rawle, 464, was a case of an indictment for stealing notes of the Bank of the United States. The notes were not described in the indictment as due and unpaid. Nevertheless, Kennedy, J., in error, held the indictment good without those words, because, he says, the bank would have been liable to pay these note to a *bona fide* holder, even had they never been issued and had been stolen from the bank's vaults while lying there ready for issue, and adds, that the taker of such a bank-note is no more bound to inquire how the previous holder obtained it, and whether or not it had been issued with the bank's consent, than a man is bound to make inquiry as to the title of silver dollars proposed to be paid him.

Phelan *vs.* Moss, 17 P. F. Smith, 67 Penna. State Reports, 59, is a case of a man who signed an agreement for the purchase of a patent. By ingeniously contrived fraud, the agreement was so drawn that by cutting it in two and detaching the upper portion, the remainder bore the appearance of a promissory note. It was held that the *bona fide* holder of this promissory note could recover against the signer of the agreement as maker of it. It is thus perfectly clear that in the issue of paper by an individual or corporation,

the genuineness and validity of such paper in the hands of *bona fide* holders is entirely irrespective of the physical fact of such issue. The law even goes a little further, and it seems settled that even where the paper is spurious admittedly, yet if any act of the maker faciliated or gave occasion to the forgery, he must bear the loss.

The law is so laid down in Byles on Bills, page 333. The leading case on this point was Young *vs.* Grote, 4 Bingham, 253, 13 E. C. L. R. There, in a check for fifty pounds two shillings, a blank was left before the word "fifty," in which the words "three hundred" were inserted, and the number 3 in another blank between the figure 50 and the mark £. It was held that the improper mode of filling the check invited the forgery, and that the loss fell on the drawer and not on the bank.

The whole law of the liability of makers and acceptors on checks, notes, and bills made or accepted in blank and fraudulently used rests on the same principle, that although the paper as completed paper has never been lawfully issued or delivered, yet as the fraud has resulted from the negligence or confidence of the maker or acceptor of the blank instrument, it is binding against him in the hands of a *bona fide* holder. These principles, applied to the case before us, would seem to make it clear that there was manifest error in rejecting the testimony as to the careless keeping of the plates and the facility of their use surreptitiously, and clearly negative the theory of the court below of the necessity of the physical issuing of the notes, since, if completed so as to be perfect in form, they would have the full effect not only of blank acceptances, but of completed paper, and no matter how obtained must bind the maker in the hands of *bona fide* holders.

Analogously, it has been held that bills or negotiable securities of corporations, not upon their face illegal or

unauthorized, are valid obligations in the hands of *bona fide* holders, although their issue was unauthorized or even *ultra vires*. Genesee Bank *vs.* Bank of Albany, ; North River Bank *vs.* Amer, 3 Hill, 262; distinguishing Atwood *vs.* Mannings, 7 Barn. & Cress., 278, and elucidating the rule that the question, whether or not an acceptance, &c. by an agent is binding upon the principal will depend on whether the limitations on the agent's authority, under which his acts are assailed, appear on the face of the instrument.

And in the celebrated case of the New York and New Haven Railroad *vs.* Schuyler, 34 N. Y., 30, where the corporation issued, through its agents, false certificates of stock, it was held liable to the party deceived and injured, and its incapacity to create the stock was held to be no defense to the action for damages, and the broad rule laid down, that corporations were responsible for the acts of their agents to the same extent as natural persons. In this case, the company had allowed blank certificates of its stock to remain in the hands of its transfer agent, who made an over-issue to a very large extent, and on all this stock the company was held; and this, although certificates of stock can hardly be considered as coming under and being included as negotiable paper.

3. We cannot put the argument, for the United States being bound by the same rules as corporations and individuals, when it engages in the making and negotiation of commercial paper, more strongly than it is put by the learned judge of the Circuit Court, nor than is laid down by Mr. Justice Wayne, and in the case of the United States *vs.* Bank of the Metropolis, 15 Peters, 377. This was the case of a draft of a contractor, accepted by the Post Office Department, and discounted at the bank. As the acceptance was unconditional, the United States was held by it,

irrespective of the condition of the account, which had actually been overdrawn, Judge Wayne saying, "when the United States, by its authorized officers, becomes a party to negotiable paper, they have all the rights and incur all the responsibilities of individuals who are parties to such instruments."

So in the United States *vs.* Barker, 12 Wheaton, 559, the rules of commercial law as to protest and notice of negotiable paper are held binding on the United States. Another case to the same effect is the United States *vs.* Price, Administrator, 2 Washington Circuit Court Reps., 460,—a case of a bill of exchange, drawn by a sub-agent on a general agent of the United States. After payment, the United States claimed to recover back the money for fraud of the agents. The court said that, *prima facie*, the bill should be considered as drawn for consideration, but the ground being laid to show fraud, they would allow the defendant to be called on to prove that he had given value for the acceptance. On the principles of the decision of the court below, in these cases, the instruments would have been treated as unauthorized, and as creating no liability in the United States, even in the hands of a *bona fide* holder.

4. There is an elaborate discussion in the charge of the learned judge of the District Court, and in the opinion of the judge of the Circuit Court in review, of the alleged impossibility of the United States being liable on instruments surreptitiously issued, or, in the words of the judge of the District Court, "not issued as a physical fact by the United States;" and it is contended that as the acts of Congress never authorized the issue of such notes, except for the purpose of bringing money into the treasury, that if they were never so issued the Government received no benefit for them, and the United States could not be liable. This seems to us a

begging of the whole question. The United States, like corporations, States, and municipalities, must act through agents or officers of a higher or lower nature, and their action or non-action, their care or their negligence in the performance of their functions, will equally avail to create a binding obligation on the principal, irrespective of whether the authority of the officer or agent is given by an act of Congress, a State law, a charter, or a by-law. If an instrument is obtained, no matter how, perfect and complete, as such instruments are issued from the Treasury of the United States, with the marks of genuineness upon them and such safeguards as the authorities of the United States have pleased to place around them, it is hard to see how any defect in authority or unlawfulness of manner or excessiveness in amount of such issue would avail to change the obligation of the United States while they would not affect the liability of individuals or corporations.

So, in the case above cited, the Commissioners *vs.* Aspinwall, the illegality of the election to authorize the issue of the bonds was not allowed to be inquired into; and in two cases, in 16 Wallace, Lynd *vs.* The County, and St. Joseph *vs.* Rogers, where the decision of the question of the compliance with legal requisites was left in the one case to the county judge, and in the other to the county board, it was held that the issue of the bonds by the officer or body authorized to decide such questions, is conclusive evidence of the validity of such issue.

5. Here, also, if the case should stand on the question intimated by the judge of the Circuit Court, whether, although notes might be valid obligations of the United States, yet unless they come within the terms of the statute as being notes authorized by the act of Congress, we must consider the form of this action and the situation of the parties. This is an action for money had and received,—an action, therefore, in substance, equivalent

(the officers could not redeem them

to a bill in equity to recover money paid under a mistake of facts, which it is contrary to equity and good conscience that the defendant should retain; and here it is clear that if the mistake was not of fact, but of law, the United States could not recover; if the error of the officers of the United States was simply as to whether the law authorized the redemption of this description of note, that would furnish no ground for action. Ignorance of the law could not excuse even the United States. But if it were a mistake of fact, and the officers of the United States had purchased a genuine obligation of the United States, but one which they were not authorized to redeem by the act of Congress in question, which seems the case put by the learned judge of the Circuit Court, it is clear that no recovery could be had, and action for money had and received, without the tender of the instruments received and accepted in mistake, and their redelivery in perfect form to Jay Cooke & Co.

Now, as set forth in the first point in our colleague's brief, the return of these notes has not only not been tendered prior to the action, but the United States have actually disabled themselves from making such tender, by punching, canceling, and destroying these instruments, so that they have become utterly valueless and useless for any purpose. (Record, page 91.) Therefore, the prerequisite to bringing such an action not only does not, but cannot exist, and that by the fault of the plaintiff. If these be valid obligations of the United States, but only not redeemable under the present act, as Judge Woodruff suggests, certainly, on every principle of law and equity, before a bill for the rescission of the purchase, or an action for money had and received, could be maintained, the vendor is entitled to receive back again his obligation, payable at a future day, in the same form as he delivered it, undefaced and unmutilated.

In the case of forged instruments, even, such tender is usually held necessary, and the only exception ever made to the rule of a necessity of tender before a bill or action for rescission, is when the object or thing to be returned is so worthless that the tender would be merely nugatory. However this might be as to a forged and spurious obligation, it cannot be contended that the exception will apply to one valid, even though irregular or not within the terms of the particular act of Congress under which the redemption was being made.

On this line of argument it is therefore made additionally clear that the instruction—that the question the jury was to pass upon was that of the issue of the notes in question as a physical act, and not the question of their genuineness in the ordinary sense of the word—was erroneous.

III.

The third division of our argument upon the third general head in the case covers the question of the effect of the acceptance of the seven-thirty notes in controversy by the United States officers from Jay Cooke & Co.. and raises the most important and vital point in the whole contest, viz., whether or not the United States stands in a different position from individuals and corporations in respect to the obligation to know its own paper, so that in the event of their accepting or paying for their own spurious paper in the hands of a *bona fide* holder they cannot claim to recover it back again. This was raised in our sixth point of request of instructions from the learned judge of the District Court, viz.:—

"If the defendants honestly believed the notes in question to be genuine obligations issued by the United States, and so believing and in good faith passed them to Mr. Van Dyck, the assistant treasurer of the United States, and the latter, under the like belief and in good faith, received the notes and paid for them, the plaintiffs are not entitled to recover, although the notes may not have been genuine obligations issued by the United States." (Record, page 74

The learned judge refused so to charge, but laid down in the principles he said should govern the trial thereof:—

"That the plaintiffs have a right to recover back, in this suit, any money belonging to it, paid by it through the assistant treasurer of the United States to the defendants as the consideration for supposed treasury notes not issued in fact by the United States." 1 14

And repeated such statement of right and liability broadly in his charge. In our eighteenth point in Circuit Court we again raised this question in our specifications of error; but the learned judge of the Circuit Court, in his discussion of the question, treating it as the first point under the second head of his arrangement, sustained the view of the judge of the District Court.

Here the first question to be considered is the nature of the action. This is an action for money had and received—one of the equitable *assumpsits*. The very gist of it is that the defendants have received from the plaintiffs money which, in equity and good conscience, as between plaintiffs and defendants, they ought not to retain. It is a bill in equity, in the form of an action at law, for the rescission of a contract on the ground of fraud or mistake,—here clearly mistake, as it was not pretended that Jay Cooke & Co. knew or suspected the notes in controversy to be spurious, even if they were so. Therefore the United States, being plaintiffs in such action, and seeking to recover on merely equitable grounds, stand bound to do equity, and it is hard to see how the very technical questions as to the right of the United States officers, to do particular acts, can fairly be brought in.

It is, of course, granted that this action will, as a general rule, lie to recover back sums of money paid by one person to another for forged or spurious paper, where both parties are strangers to the paper and there is no liability or duty on the purchaser or receiver of the forged paper rather than on the vendor of it to know its character. This is clearly analogous to a bill for rescission. The last taker of the two

innocent parties is held the least in fault, having received it with the ordinary and common presumption or implied representation of genuineness, and can, therefore, on a prompt notice and tender or return of the spurious instruments, recover back the money paid for them. And the analogy of the equitable rule is strictly observed, that if there is any laches or undue delay in returning or tendering such spurious instruments back, or otherwise the plaintiff's conduct is such as to entail loss in the matter on the vendor, an equitable estoppel or estoppel *in pais* is held to arise, which destroys the plaintiff's right of rescission. That is, the equity of the transaction has changed and, by reason of this course of conduct, it is no longer contrary to equity and conscience for defendant to retain the money he received from plaintiff for the spurious instruments. Of course, in actions of tort for an instrument being otherwise than represented, the rule is somewhat different; but even in cases of false representation or deceit, where the tort is waived and action of *assumpsit* for money had and received brought, the same rule would prevail.

The following cases illustrate this rule as to forged instruments between parties other than the supposed makers or others specially bound to knowledge of genuineness:—

Pooley *vs.* Brown, 103 E. C. L., 566, was a suit by the holder of a forged bill to recover its amount from the party from whom he had purchased it. The laches of plaintiff in giving notice and making claim on defendant was held to bar his recovery.

The same rule was adopted by the Supreme Court of Pennsylvania in Rick *vs.* Kelly, 6 Casey, 529, a similar suit between like parties.

So in Raymond *vs.* Baar, 13 Sergt. & Rawle, 319, the same court held a delay of six months before demanding repayment of a counterfeit bank-note "was most unreasonable negligence" and barred recovery.

The learned judge of the Circuit Court seems to have

confounded the two grounds which would prevent recovery by the purchaser or acceptor of forged paper, viz., laches in making the discovery of the forgery known, which is a subsequent disability, and the original disability to such recovery, arising from the duty of knowledge in the taker or acceptor, which, by removing the presumption of a representation of genuineness, cut off this respon
root. In the case in 10th Wheaton, repea
Woodruff's opinion, both of these obstacles
they were treated by the court in that case
grounds, either of which would prevent recovery, while the learned judge seemed to argue that the concurrence of both obstacles were needed to make up the defense.

The law, however, seems clearly settled that the mere circumstance of the existence of a special duty or reasonable presumption of knowledge in the taker of the genuineness of the paper without more is sufficient to prevent recovery of the vendor of the price. Lord Mansfield lays down the principle which governs here very clearly, in Price *vs.* Neale, 3 Burr, 1355, the case of two bills which the drawee first accepted and took up and then paid for, one in advance of maturity. There he lays down broadly that the acceptor was bound to know the *drawee's* signature, and says that therefore there being such a duty on his part, there was no bad conscience in the defendant keeping the money paid him for the forged drafts, as he had paid full value for them, and therefore the plaintiff was not allowed to recover the money back in an action for money had and received. Since that case the decisions have been uniform that the drawee is bound to know the drawer's signature, and cannot recover back the money paid under a mistake as to its genuineness, nor revoke an acceptance of it. So it has been held of a bank, that it is bound to know the signatures of its customers, and cannot recover back money paid to a *bona fide* holder of a forged check upon it. This is ruled in Levy *vs.* The Bank of the United States, 1 Binney, 27. Here the mistake was discovered and recti-

innocent parties is held the least in fault, having received it with the ordinary and common presumption or implied representation of genuineness, and can, therefore, on a prompt notice and tender or return of the spurious instruments, recover back the money paid for them. And the analogy of the equitable rule is strictly observed, that if there is any laches or undue delay in returning or tendering such spurious instruments back, or otherwise the plaintiff's conduct is such as to entail loss in the matter on the vendor, an equitable estoppel or estoppel *in pais* is held to arise, which destroys the plaintiff's right of rescission. That is, the equity of the transaction has changed and, by reason of this course of conduct, it is no longer contrary to equity and conscience for defendant to retain the money he received from plaintiff for the spurious instruments. Of course, in actions of tort for an instrument being otherwise than represented, the rule is somewhat different; but even in cases of false representation or deceit, where the tort is waived and action of *assumpsit* for money had and received brought, the same rule would prevail.

The following cases illustrate this rule as to forged instruments between parties other than the supposed makers or others specially bound to knowledge of genuineness:—

Pooley *vs.* Brown, 103 E. C. L., 566, was a suit by the holder of a forged bill to recover its amount from the party from whom he had purchased it. The laches of plaintiff in giving notice and making claim on defendant was held to bar his recovery.

The same rule was adopted by the Supreme Court of Pennsylvania in Rick *vs.* Kelly, 6 Casey, 529, a similar suit between like parties.

So in Raymond *vs.* Baar, 13 Sergt. & Rawle, 319, the same court held a delay of six months before demanding repayment of a counterfeit bank-note "was most unreasonable negligence" and barred recovery.

The learned judge of the Circuit Court seems to have

confounded the two grounds which would prevent recovery by the purchaser or acceptor of forged paper, viz., laches in making the discovery of the forgery known, which is a subsequent disability, and the original disability to such recovery, arising from the duty of knowledge in the taker or acceptor, which, by removing the presumption of a representation of genuineness, cut off this responsibility at the root. In the case in 10th Wheaton, ~~reported~~ referred to in Judge Woodruff's opinion, both of these obstacles concurred, but they were treated by the court in that case as cumulative grounds, either of which would prevent recovery, while the learned judge seemed to argue that the concurrence of both obstacles were needed to make up the defense.

The law, however, seems clearly settled that the mere circumstance of the existence of a special duty or reasonable presumption of knowledge in the taker of the genuineness of the paper without more is sufficient to prevent recovery from the vendor of the price. Lord Mansfield lays down the principle which governs here very clearly, in Price *vs.* Neale, 3 Burr, 1355, the case of two bills which the drawee first accepted and took up and then paid for, one in advance of maturity. There he lays down broadly that the acceptor was bound to know the *drawee's* signature, and says that therefore there being such a duty on his part, there was no bad conscience in the defendant keeping the money paid him for the forged drafts, as he had paid full value for them, and therefore the plaintiff was not allowed to recover the money back in an action for money had and received. Since that case the decisions have been uniform that the drawee is bound to know the drawer's signature, and cannot recover back the money paid under a mistake as to its genuineness, nor revoke an acceptance of it. So it has been held of a bank, that it is bound to know the signatures of its customers, and cannot recover back money paid to a *bona fide* holder of a forged check upon it. This is ruled in Levy *vs.* The Bank of the United States, 1 Binney, 27. Here the mistake was discovered and recti-

fied the same day; but it was held that the bank having in effect paid the check of its customer, was without remedy, and the person who had received the money, having mistakenly returned it to the bank, was held entitled to recover it back from them. And here there was no reason for asserting, as intimated by the Circuit Court, that the ground of this ruling was an equitable estoppel, because the payee had been misled or damaged by the drawee's action, for he was not in any way; there were no endorsers to be charged, and notice was given the same day. The case stands, as do all the authorities, on the broad ground that the warranty or representation of genuineness of title which ordinarily is implied on vendor's part, has no existence where there is a higher duty or greater means of knowledge in the purchaser or acceptor than in the vendor.

So in the series of cases in New York Canal Bank *vs.* The Bank of Albany, 1 Hill, 287; Union Bank *vs.* Bank of Com., 3 Comst., 230, &c. The distinction is clearly made between the forgery of the drawer's signature, with which the bank as acceptor is held bound to be acquainted, and that of the ~~examiners~~ endorsers when no special duty is held to lie on the acceptor. And in the former case it is held that after payment or acceptance forgery cannot be set up, but in the latter case it may.

And the same distinction is made in Jones *vs.* Ryde, 5 Taunt., 488.

So Buller, J., says in Smith *vs.* Chester, 1 Term Rep., 654. The drawee by acceptance admits drawer's handwriting and is responsible though it be proved a forgery.

Of course argument is unnecessary to prove that if a man or a corporation is bound to know his or its correspondent's or customer's signature, *a fortiori* must he know his own. In no case is this more fully shown, and the law on this point better elucidated, than in the decision of this court in the case of The United States Bank *vs.* The Bank of Georgia, 10 Wheaton, 334, which the learned judge of the Circuit

Court unsuccessfully endeavored to distinguish from the present. The case was of forged bank-notes; there were no endorsers to be notified. The deposit of the forged notes was made February 25th, 1819, notice of the forgery was given March 16th of the same year, and tender of return made on the 17th, twenty days after taking. (In our case the lapse of time was twenty-two days, from September 20th to October 12th, and there was never any tender.) But the court, while saying that the laches would prevent recovery, and the proof of actual damage from it was unnecessary, place this decision directly on the ground of the duty of knowledge by the bank of its own paper, and Justice Story says, in his opinion, "the receipt of forged notes purporting to be its own must be deemed an adoption." "The bank had the means of knowing if the paper was genuine, by its system of marks or registry." And thus the forgery was actually discovered by an examination and comparison of marks and numbers. These, the court said, outsiders could not be expected to be familiar with, but the bank was bound to know. And the case was decided on the ground that it was an actual payment which there was not equity to recover back.

And where is there any equity here in plaintiffs, or how can the present case be distinguished? The United States seven-thirty notes are, to all intents and purposes, as much the current negotiable paper of the country as bank-notes, and can be tried by no other standard. The judge of the Circuit Court dwells on there being no proof of actual damage, but it was by this court held unnecessary to give such; and similarly did Buller, J., hold in Smith *vs.* Mercer, 6 Taunton, 76. The learned judge dwelt on these notes being taken up in advance of maturity,—so were the bills of exchange in Price *vs.* Neale, the case decided by Lord Mansfield; and the case was really not without proof of special damage, since these purchases and sales lasted through some space of time, and a prompt discovery of the first would have saved Jay Cooke & Co. from purchasing others. (See page 235, *et seq.* printed testimony.)

The only remaining ground, therefore, on which the contention that the United States is not bound by the acceptance of the notes in controversy by its officers can be based, is the allegation that the officers of the United States were bound literally by the words of the act of Congress, to redeem actually existing obligations of the United States, issued under an act of Congress; and the inference that, therefore, the responsibility of deciding the question whether or not a particular obligation was so issued is thrown, not on the officer, but on the previous holders. It would almost seem sufficient to state this proposition to show its untenability, and it would seem transparently clear that such a claim ~~fraud~~ can furnish no ground for the United States to base an equity on, or to recover money, because the vendor retain cannot in good conscience ~~return~~ it.

But it can be made abundantly clear, from authority as well as principle, that there is no foundation for it. The cases cited above show that in all business transactions of this kind the United States stands exactly as individuals or corporations would. Of course, a nation, like a corporation, must act through its officers or agents, and the action of the proper officers must, in all cases where they are to be bound, bind them, since neither a State nor a corporation can act individually, or otherwise than through its proper officers or representatives. And it cannot be disputed that in all cases of corporations—taking, for instance, their own forged paper, or otherwise sustaining loss through misconduct or negligence of their officers—the authority of the officer must be an implied one, since there is and can be no direct authority to an officer to take forged paper of a bank, or to bind a corporation contrary to his trust. But the authority of the officer is implied from the discretion necessarily intrusted to him. So in the case above referred to of the United States Bank *vs.* The Bank of Georgia, 10 Wheaton, in taking such notes of *bona fide* holders without objections, 334, it could not be argued that the cashier or other officer was authorized to receive forged paper of the bank on deposit; but as he had authority to receive genuine paper,

the discretion to decide whether or not the paper was genuine. And this rule, that where a discretion is implied in the duty committed to the officer or agent, his action in matters included in the free scope of that discretion necessarily concludes his master or principal, even if fraudulently exercised, is distinctly laid down in the leading case as to certified checks.

Farmers' and Mechanics' Bank *vs.* Butchers' and Drovers' Bank, 14 N. Y., 623, which was the case of an action by a *bona fide* holder for value of a check certified good by teller of the bank. The teller's authority was to certify checks as good when there were funds. He negligently or fraudulently certified a check against which there were none. The bank was held bound, for his duty required his examination whether there were funds or not, and his decision within the scope of this duty bound them. The learned opinion of Justice Swayne, in the case of the Merchants' Bank *vs.* State Bank, 10 Wallace, 637, also a case as to certified checks, adopts this decision as law, and fully recognizes this principle of the necessarily binding character of the acts of officers within the scope of their apparent discretion. Thus, pages 644 and 645:—"Where a party deals with a corporation in good faith—the transaction is not *ultra vires*—and he is unaware of any defect of authority or other irregularity on the part of those acting for the corporation, and there is nothing to excite suspicion of such defect or irregularity, the corporation is bound by the contract, although such defect or irregularity in fact exists.

"If the contract can be valid under any circumstances, an innocent party in such a case has a right to presume their existence, and the corporation is estopped to deny them.

"The principle has become axiomatic in the law of corporations, and by no tribunal has it been applied with more firmness and vigor than by this court.

"Corporations are liable for every wrong of which they they are guilty, and in such cases the doctrine *ultra vires* has no application."

" Corporations are liable for the acts of their servants while engaged in the business of their employment, in the same manner and to the same extent that individuals are liable under like circumstances. Estoppel *in pais* presupposes an error or a default, and implies an act in itself invalid. The rule proceeds upon the consideration that the author of the misfortune shall not himself escape the consequences and cast the burden upon another."

The same rule is laid down by this court in the various county and city bond cases previously referred to. Lynde *vs.* The County, 16 Wall, 13. St. Joseph *vs.* Rogers, *id.*, 665, where certain officers being intrusted with the right of issuing bonds on the completion of certain preliminaries, the discretion of deciding whether or not these had been duly complied with was held necessarily implied in their duty and authority, and the county or city bound by their decision. In the one case the county judge, in the other the supervisor, was ordered to issue the bonds,—the result of the election was favorable to such issue,—and their act in issuing such bonds was held to conclude these counties from disputing the fact that the popular vote was duly taken and in favor of the issue, on the ground that their functions implied the right of deciding this question. To the same effect are Knox *vs.* Aspinwall, and other cases previously cited, and City of Lexington *vs.* Butler, 14 Wall, 282, where, in case of bonds issued by the mayor, reciting that they were duly authorized, Mr. Justice Clifford said the law was clear that where a corporation has power, under any circumstances, to issue such commercial paper, a *bona fide* holder has a right to presume them issued under such circumstances.

And in several cases this doctrine as to the implied power of officers has been applied against the United States.

In Allen *vs.* Blunt, 3 Story Circuit Law Reports, 742, it is laid down as law that whenever a particular authority is given to a public officer (in that case Commissioner of Patents) which must be decided in an examination of facts

before him, of which he is the appropriate judge, his decision must be conclusive. And although this may be too broadly laid down as to outside parties, it cannot be questioned to be law as to the officer's master. The case of The United States *vs.* Price, Administrator, before referred to, 2 Wash. C. C. R., 460, was the case of a bill of exchange drawn by sub-agent of the United States on general agent. After payment, suit was brought by the United States to recover back, on ground of fraud of agent. The court held the essential question was whether the previous holder to whom the United States' money had been paid was a *bona fide* holder for value. In the case of The United States *vs.* Bank of Metropolis, 15 Peters, 377, also cited above on another point, the court, in the case of the draft of a contractor accepted by the Postmaster General in error as to the state of his accounts, held the United States bound by an unconditional acceptance, because, as Mr. Justice Wayne said, they were subject to general rules as to negotiable paper. It cannot be contended the Postmaster General was authorized to accept drafts of contractors who had nothing to their credit, and the decision must rest on the ground that he was the officer to whom the discretion of deciding whether or not a contractor had funds to his credit was intrusted. So here the officers of the treasury must be held to have been the officers who were intrusted with examination and decision whether or not particular notes were genuine or issued under the acts of Congress referred to. To hold any other rule would be to make the citizen absolutely helpless in cases of skillful forgeries, which, deceiving the skilled officers of the United States, would deceive them, of course, and which might be returned to them at the expiration of any period of time, however great, when all evidence or trace of the matter might be gone.

leaving
s "and

IV.

We may add, supplementarily, the United States, ~~then~~ This destroying ~~them~~ their notes by cancellation and punching, and

" Corporations are liable for the acts of their servants while engaged in the business of their employment, in the same manner and to the same extent that individuals are liable under like circumstances. Estoppel *in pais* presupposes an error or a default, and implies an act in itself invalid. The rule proceeds upon the consideration that the author of the misfortune shall not himself escape the consequences and cast the burden upon another."

The same rule is laid down by this court in the various county and city bond cases previously referred to. Lynde *vs.* The County, 16 Wall, 13. St. Joseph *vs.* Rogers, *id.*, 665, where certain officers being intrusted with the right of issuing bonds on the completion of certain preliminaries, the discretion of deciding whether or not these had been duly complied with was held necessarily implied in their duty and authority, and the county or city bound by their decision. In the one case the county judge, in the other the supervisor, was ordered to issue the bonds,—the result of the election was favorable to such issue,—and their act in issuing such bonds was held to conclude these counties from disputing the fact that the popular vote was duly taken and in favor of the issue, on the ground that their functions implied the right of deciding this question. To the same effect are Knox *vs.* Aspinwall, and other cases previously cited, and City of Lexington *vs.* Butler, 14 Wall, 282, where, in case of bonds issued by the mayor, reciting that they were duly authorized, Mr. Justice Clifford said the law was clear that where a corporation has power, under any circumstances, to issue such commercial paper, a *bona fide* holder has a right to presume them issued under such circumstances.

And in several cases this doctrine as to the implied power of officers has been applied against the United States.

In Allen *vs.* Blunt, 3 Story Circuit Law Reports, 742, it is laid down as law that whenever a particular authority is given to a public officer (in that case Commissioner of Patents) which must be decided in an examination of facts

before him, of which he is the appropriate judge, his decision must be conclusive. And although this may be too broadly laid down as to outside parties, it cannot be questioned to be law as to the officer's master. The case of The United States *vs.* Price, Administrator, before referred to, 2 Wash. C. C. R., 460, was the case of a bill of exchange drawn by sub-agent of the United States on general agent. After payment, suit was brought by the United States to recover back, on ground of fraud of agent. The court held the essential question was whether the previous holder to whom the United States' money had been paid was a *bona fide* holder for value. In the case of The United States *vs.* Bank of Metropolis, 15 Peters, 377, also cited above on another point, the court, in the case of the draft of a contractor accepted by the Postmaster General in error as to the state of his accounts, held the United States bound by an unconditional acceptance, because, as Mr. Justice Wayne said, they were subject to general rules as to negotiable paper. It cannot be contended the Postmaster General was authorized to accept drafts of contractors who had nothing to their credit, and the decision must rest on the ground that he was the officer to whom the discretion of deciding whether or not a contractor had funds to his credit was intrusted. So here the officers of the treasury must be held to have been the officers who were intrusted with examination and decision whether or not particular notes were genuine or issued under the acts of Congress referred to. To hold any other rule would be to make the citizen absolutely helpless in cases of skillful forgeries, which, deceiving the skilled officers of the United States, would deceive them, of course, and which might be returned to them at the expiration of any period of time, however great, when all evidence or trace of the matter might be gone.

IV.

We may add, supplementarily, the United States, This ~~then~~ destroying ~~them~~ these notes by cancellation and punching, and

after that claiming the money back, would, so far from having any equity, put themselves in the light of a wrong-doer. Their punching and destruction of the papers would be a tort which would prevent their recovering in this action.

Being plaintiffs, they would be responsible like corporations for their torts. Corporations are responsible for wrongs done, irrespective of charter or powers. In such cases, as decided by Mr. Justice Swayne in Merchants' Bank *vs.* State Bank, 10 Wallace, 645, *supra*, the doctrine of *ultra vires* has no application—~~no similarity~~. Such wrongs done by its officers, irrespective of law authorizing the act, could be lapsed against the United States when they are, as here, plaintiffs.

In this connection the following cases may also be referred to:—

In the Philadelphia, Wilmington and Baltimore Railroad Company *vs.* Quigly, 21 Howard, 203, this court held that a railroad company could be held responsible for a libel contained in a report published by their Board of Directors.

So in Green *vs.* The Omnibus Company, 97 E. C. L., 300, the corporation defendants were held answerable for the wrongful and malicious driving of their omnibuses so as to obstruct plaintiff's use of the highway.

To conclude, the argument on the first two general heads shows the case was unfairly submitted to the jury, and that we are entitled to a reversal for misdirection and error in exclusion and admission of evidence. Our argument under third head shows that on the admitted facts the United States have no equity and can never recover in this action, and if the court are with us—and we cannot see how they can fail to be on this point—the reversal will be an end of the case.

R. L. ASHHURST,
JOHN C. BULLITT,
Of Counsel with Plaintiffs in Error.

[*Note to page 12.*]

Garrard *vs.* Haddan, 67 Penna. State Reports, 82.

Garrard signed a printed note for one hundred dollars, leaving a blank after the word "hundred," in which the words "and fifty" were fraudulently inserted, in such manner as to raise no suspicions from its appearance of the fraud. The plaintiff took it *bona fide* and without notice, and it was held he could recover the full amount from the maker. The court rule the case on the principle laid down in Byles on Bills and the case of Young *vs.* Grote, cited on page 13.

So in Van Dusen *vs.* Howe, 21 New York, 531.

"A party who intrusts another with his acceptance in blank is responsible to a *bona fide* holder, although the blank be filled with a sum exceeding that fixed as a limit by the acceptor."

Lancaster National Bank *vs.* Moore, S. C. of Penna., reported in the "Weekly Notes," (Philadelphia,) volume 1, page 585.

A made his promissory note to the order of B. They went together to the plaintiff's bank, and had it discounted and the proceeds placed to the credit of A. A, by a commission of lunacy held three months later, was held to have been *non compos* at the time of giving the note. But the Supreme Court held that the plaintiff could recover, having taken the note *bona fide* and for value, without any notice of the mental condition of the maker.

State Bank *vs.* McCoy, 69 Penna. State, 209.

Defendant was fraudulently induced to execute a promissory note while so intoxicated as not to know what he was about. The plaintiffs were *bona fide* holders for value and without notice of the fraud. *Held*, they could recover. And it was said by Mr. Justice Williams that gross negligence of the plaintiffs in taking the note would not defeat their right, unless they took it *mala fide*, or with notice of the fraud.

[*Note to page 23.*]

Gloucester Bank *vs.* Salem Bank, 17 Mass., 33.

Gloucester Bank received from Salem Bank, in payment of balance, what purported to be its own notes. Two weeks later these were found to be forgeries, and an action was brought to recover back their amount from the Salem Bank. *Held*, the bank was bound to know its own paper and its discovery was too late. "When a debt is paid a bank in what purports to be its own notes, and which they have the best means of detecting, if spurious, nothing short of immediate notice to payer and demand on him for payment, can authorize them to maintain action for the money."—*Per Parker, C. J.*

National Bank *vs.* Allen, S. C. of Mo., Cent. L. J. (St. Louis) for 1875, page 612.

Adopts and reaffirms the same principle, and makes the distinction between the case of a bank paying upon the forged signature of a customer, when it may recover back from the payee if it discover the forgery, and the case of its receiving or accepting a forged note purporting to be its own.

In this case a bank paid a check purporting to be drawn by one of its customers, which was discovered two days afterwards to be a forgery. It was held it might recover back from the payer, and that in such a case recovery might be had if forgery be discovered within any reasonable time. "The case is distinguished from that of a bank receiving and paying what purports to be its own note." "It is bound to know its own paper." Receipt by a bank of forged notes purporting to be its own must be deemed an adoption of them.—*Per Wagner, J.*

[*Note to page 25.*]

Tome *vs.* Parkersburg Railroad Company, 39 Md., 36.

The treasurer of a railway company, whose duty it was to countersign and issue certificates of stock, and having the custody of a number of certificates signed in blank by the president, fraudulently issued certificates, regular in form, but representing no stock, and pledged the same for money borrowed by himself. *Held*, the railroad was liable to pledgee, who had taken the stock *bona fide* and without notice, for amount of loan.

Titus *vs.* The Turnpike Company, 5 Lans., (N. Y.,) 250.

A like case and similar decision.

Atlantic Bank *vs.* Merchants' Bank, 10 Gray, 532.

A teller certified a check as good, when the drawer had, in fact, no funds on deposit. *Held*, the bank was bound by his action.

Supreme Court of the United States.

OCTOBER TERM, 1875.

JAY COOKE AND OTHERS, PLAINTIFFS IN ERROR,
vs.
THE UNITED STATES, DEFENDANTS IN ERROR.
} No. 275.

ON WRIT OF ERROR TO THE CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

Brief for the Defendants.

Supreme Court of the United States.

OCTOBER TERM, 1875.

JAY COOKE AND OTHERS, PLAINTIFFS IN ERROR,
vs.
THE UNITED STATES, DEFENDANTS IN ERROR.
} No. 275.

ON WRIT OF ERROR TO THE CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

Brief for the Defendants.

We admit that when the United States engage in commercial business, they do so in general submission to the principles of law which, in such business, apply to private persons.

But the transaction (viz, *anticipated payment*) out of which the present action sprang was not of a commercial, but of an *administrative* character. Although the paper acted upon was commercial paper, the act itself was collateral to both the *terms* and the *consideration* of the original contract.

An outline of the facts is as follows; Before a certain class of the public debt, evidenced by Treasury notes,

fell due, the United States, upon public reasons alone, made proposals to take it up, which, for so much as was by them controlled, the plaintiffs in error accepted. As part of the consequent transaction, the plaintiffs innocently transferred to the agent of the United States eighteen notes which did not really belong to that class, but either were *counterfeit*, or had not been actually (or as the court below said, "physically") *issued*.

The question under consideration is whether that part of the transaction can be corrected.

In cases somewhat like this, (supposing these notes *counterfeit*,) when between private parties, such correction has been held (see Price *vs.* Neal, &c., cited by the plaintiffs) to be, in general, inadmissible; inasmuch as courts will not interfere against an *innocent* defendant in favor of a plaintiff whose case is *no more* (*a fortiori* if it be *less*) than that he is *equally innocent*.

This, however, is not upon a principle peculiar to commercial law, but upon one that pervades the law of actions in every department.

Therefore, if the plaintiffs be such as by public policy are not affected by the (*non*-commercial) laches of agents, and such also as that their *innocence* is always to be *preferred* where it comes into collision with the *innocence* of private persons, if the transaction be not commercial, they must recover.

The exceptional principles of law to which, in issuing commercial paper, the United States submit themselves, are those which have been devised to impart and sustain the exceptional credit and currency of such paper *while in circulation*. If, in any transaction, it be sought

to create an exception to the ordinary privileges of the United States, as regards *laches*, &c., it must be shown that the *reason* for the exception applies. The mere laches of *paying* forged paper cannot operate injuriously upon innocent persons, although laches in *discovering* or *notifying* such mistake may. In the former case, the rule of decision would come from such cases as United States *vs.* Kirkpatrick, 9 Wheat., 735, and Gibbons *vs.* United States, 8 Wall., 269; in the latter, perhaps, from United States *vs.* Barker, 12 Wheat., 557, &c. The rules of commercial law which cover laches as to paper *in circulation* do not apply to a transaction which *retires* the paper. The cases cited by the plaintiffs, (brief, p. 24,) in which it has been held that the United States are bound by the laches of their agents as to commercial paper, are cases where the paper continued in circulation after such laches, not where it thereby reached its supposed *home*.

The above remarks are pertinent in case the notes are *counterfeit;* but the line of instruction pursued in the court below in regard to notes not "physically" issued by the United States requires us to consider, in connection therewith, the circumstance that, when paid, these notes were *not due*, and that they were paid under a special authority.

If counterfeit, we submit that the consideration might be reclaimed by the United States, whether the notes were or were not due when paid. If, however, they were only *not actually issued* by the United States, and were valid upon their face, we admit that in regard to *bona-fide* holders the defense must turn upon the circumstance that they were paid *before due*, under a special authority which did not cover them.

In this connection we may correct an inadvertency (perhaps unimportant) in the Additional brief filed for the plaintiffs, (p. 23): In Price *vs.* Neal the notes were *not* taken up *before* they were due.

In the present case the notes would have become due on the 15th of June, 1868, (Record, p. 91,) but were retired more than seven months before, (p. 30.) The validity of the transaction depends, therefore, upon the intention of Congress as conveyed by the act of 1866, chap. 39, (14 Stat. 31.) The only words of that act important to be considered in this connection are those which define the use to which the Secretary of the Treasury was to apply certain ways and means therein provided, which words are: "The proceeds thereof to be used only for retiring Treasury notes issued under any act of Congress; but nothing herein contained shall be construed to authorize any increase of the public debt." (Sec. 1.)

Is a Treasury note which originally went into circulation surreptitiously properly included within the above expression, "Treasury notes issued under any act of Congress?" Did Congress intend to erect the officials to whom, as was well known, this redemption would necessarily in practice be committed into a special tribunal authorized to pass upon the refined considerations which influence learned courts in deciding upon the liability of parties to commercial paper, *or* did it intend that their authority should be limited to the admission as against the Government of a *prima facie* case of *physical issuing* only? If the present question had actually been raised before the assistant treasurer, would he have been authorized to discuss and decide it? Did Congress intend to submit the interests of the public in the question of fact as to "*issue*" to the determination

of the agents in redemption so completely that mistakes in its decision could not be corrected, no matter how speedily attempted?

With these general suggestions we pass to a specific consideration of the errors assigned in the brief of the plaintiffs.

I. The refusal to instruct the jury that if Cooke & Co. *passed*, and the assistant treasurer *received*, the notes *in good faith* as genuine obligations, the United States could not recover.

This suggestion seems to go upon one of two grounds: (*a*) that the laches of the assistant treasurer in receiving notes not belonging to the class covered by his authority is to be attributed to the United States; or (*b*) that courts will not interfere between parties equally innocent.

To what has been already said by us upon these topics we add that the extent to which the Government is embarrassed by its necessary employment of *agents*, as well as its characteristic *passiveness* in dealing with individuals, sharpened as the wits of the latter always are by self-interest, make an indelible distinction between its rights and those of the private persons, in case of a collision of their respective interests under circumstances in other respects equal. In such case the maxim *salus populi suprema lex* is applied under our system of law with many familiar varieties of illustration; *ex. gr.*, The *nullum tempus* maxim, Exemption from payment of interest, Preference in recovery of debts, Eminent domain, the exceptional construction placed upon Conveyances by the public, &c.

The plaintiffs (brief, p. 25) cite Martin *vs.* Mott, 12 Wheat., 19–31, to show that the act of 1866, in authorizing the Secretary to redeem Treasury notes of a certain class, *i. e.*, those issued as above, conferred upon him jurisdiction to decide without appeal whether a particular note tendered to him belonged to that class. It seems plain that the well-established principle of Martin *vs.* Mott cannot be applied so as to enable an agent and a third person who does business with him, practically to enlarge, in the interest of the latter, the sphere of agency defined by the principal, and previously declared to such third person. In the latter case the rule is that laid down by this court in the Floyd Acceptances, 7 Wall., 676: The agency "may be a limited authority to draw or accept under given circumstances defined in the instrument which confers the power. But in either case the person dealing with the agent, knowing that he acts by virtue of a delegated power, must, at his peril, see that the paper upon which he relies comes within the power under which the agent acts."

If the Assistant treasurer had no authority to redeem the notes in question, his action can be ratified only *by Congress*, which body alone has authority to order payment of Treasury notes to be anticipated: according to the rule laid down in Marsh *vs.* Fulton Company, 10 Wall., 676.

II. The second, third, fourth, and fifth assignments, as summed up on page 29 of the brief for the plaintiffs, are that the court erred in ruling that the only notes which could be retired under the act of April 12, 1866, were those *actually* issued by the United States.

Upon this assignment, as already said, we submit that

a distinction exists between what the United States might be bound to do at the maturity of notes perfect upon their face which have gotten into circulation irregularly, and what by the act of 1866 they intended to do as to notes not yet matured. *Animus hominis est anima scripti.* It will hardly be supposed that Congress actually *intended* to redeem any paper not actually issued, and so long at least as such paper was immature, they were not *bound* to do so. The meaning given to *issue* in this connection by the court below is the same as that which it obviously bears in other connections in the same statute and in the related statutes of 1865, ch. 77, (13 Stat., 468.)

III. It is said that the court erred, fifthly, in admitting the "K" notes, inasmuch as that evidence was *irrelevant* to any issue before the court.

The genuineness of these notes was not denied. They were used during the examination and cross-examination of several witnesses without objection. (Record, pp. 41, 42, 43, &c.) They were introduced in order to impeach the "C" notes by *comparison* to be made by experts. The reason for testing by *comparison* characters produced by machinery is much stronger than that for so testing handwriting. In New York *comparison* is competent as a means of testing even handwriting, in case the genuineness of the paper used as a standard be admitted. (Code, &c., 1764.) Here the objection below was to the *relevancy*, not to the *genuineness* of the "K" notes. However, if competent for comparison, they were not irrelevant; and if genuine, they were competent for comparison.

As the "K" notes belonged to the class retired by

the same act that is here relied upon for the notes in question, and therefore had a public character and came from a public repository, it seems that their title, to be regarded as genuine, stands upon a different footing from that of private papers, and would authorize their use for comparison where it might not be competent to use private papers.

The reason of the old rule of evidence upon the subject of testing *writings* by comparison has in later times been somewhat discredited. (2 Taylor Ev., § 1667.)

IV. As to the error assigned in allowing certain questions to be put to the witnesses Casilear and Cooper; and in excluding certain questions put to the witnesses Ryerson and Tichener.

1. No answer was given to the first question to Casilear, (Record, p. 41, top,) therefore there was no *error*.

2. No good reason is suggested or occurs for excluding an expert familiar with the products of a certain engraved plate from testifying that certain engravings could not have been produced by it. That the witness was called upon "to testify to the very fact which it was the province of the jury to determine," so far as it is true, is no objection, for such is the situation of all witnesses who give their opinions upon the genuineness of handwritings or other articles as to whose origin an issue is made before a jury. (Folkes *vs.* Chadd, 3 Doug., 157.)

This observation covers the other three questions addressed to Casilear and Tichener.

3. Casilear and Cooper were asked as to the products of a plate shown to be in a certain condition. Ryerson and Tichener were asked as to the products of that plate if in another condition, *not shown to have existed.*

The plaintiffs in error were allowed (Record, pp. 60, top, and 63, first "Q.") to show that in the experience of Ryerson and Tichener differences as great as those between notes "C" and "K" had been produced by "defective re-entering" of other plates used by the Government; but these witnesses were not allowed to speculate beyond this as to the results of a *supposed* defective re-entering of the plates in question.

The difference in principle between the questions to Casilear and Cooper and those to Ryerson and Tichener is obvious. The former were asked as to the products of a plate in a certain *existing* condition; the latter were not asked to contradict that opinion, but to say what would be the products of the plate in a certain *possible* condition.

V. As to the evidence of Holmes in relation to the letter written and sent by him.

We do not agree with the remark made by the plaintiffs in error as to the absence of competent evidence other than that letter, tending to connect the plaintiffs in error with the "C" notes.

Irwin has stated (Record pp. 30, bottom, and 36) that the eighteen notes bore the stamp (see Van Dyck's evidence, p. 39) of Jay Cooke & Co., so had E. L. Jones, p. 35, near bottom, and T. G. Jones, p. 38, near bottom. It was also shown (p. 40, top) that notes bearing the same numbers were the property of the plantiffs at various dates from the 18th of September to the 5th of October, 1867, and at dates from perhaps the 1st to the 5th of October (p. 35, middle) had been transferred by somebody to the United States.

To return, however, to the matter alleged for error.

We do not find that Holmes is said to have *signed* as well as to have "written or drafted" and sent the letter.

Error is never *presumed*. The question is not as to *his* knowledge, but as to that of Jay Cooke & Co., who had authorized or had adopted what had been written. The evidence was not tendered to show that the letter was wholly that of Holmes, for, if so, the *grounds* of the statements therein would have been immaterial, as in any event the statements themselves would *not* have been statements of the plaintiffs. The material part of this transaction is that in the letter-book of the plaintiffs letters were found purporting to give what *they* (not Holmes) had *said* to other persons about these notes. If the representations were representations made *through* an *agent*, the plaintiffs were affected by them as made, and the state of their agent's mind while making them is immaterial.

The point in the additional brief (p. 27,) that the cancellation of the notes disables the Government from a recovery is not well taken.

The whole case of the Government goes upon the theory that the notes are worthless. Their value has not been lessened by the cancellation. If it were a matter of rescission of a voidable contract, then whether the party seeking to avoid could place the other *in statu quo* would be important. That is not the case here. The article transferred is, upon the theory of the defendants, wholly worthless, whether cancelled or uncancelled.

EDWARDS PIERREPONT,
Attorney-General.

S. F. PHILLIPS,
Solicitor-General.